



Australian Government
Department of Defence

OBJ Reference: BN23841716

FOI 158/20/21 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act) for access to:

“I request any training manuals/guides or documents that govern or instruct in the use of any Palantir technology/software used by the Department.

This includes documents provided by Palantir – or created by the Department – that govern or instruct in its use either by staff or contractors.

The dates for this request are January 1 2017 -- present.”

FOI decision maker

2. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified two documents as matching the description of the request.

Decision

4. I have decided to:

- a. Deny access to one document in accordance with section 47 of the FOI Act; and
- b. partially release one document in accordance with section 22 of the FOI Act, on the grounds that the deleted material is considered exempt under section 47 of the FOI Act;

Material taken into account

5. In making my decision, I had regard to:

- a. the terms of the request;
- b. the content of the identified documents in issue;
- c. relevant provisions in the FOI Act;
- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
- e. Consultation with relevant Defence subject matter experts and third parties.

Reasons for decision

Section 47 - Documents disclosing trade secrets or commercially valuable information.

6. Section 47 of the FOI Act provides that a document is exempt from disclosure requirements ‘if its disclosure under the Act would disclose (a) trade secrets; or (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed’. In regards to the terms “commercial value” and “destroyed or diminished” the Guidelines provide:

5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is

involved. The information need not necessarily have ‘exchange value’, in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- *whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value*
- *whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors*
- *whether a genuine ‘arm’s-length’ buyer would be prepared to pay to obtain that information x whether the information is still current or out of date (out of date information may no longer have any value)*
- *whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.*

5.206 The time and money invested in generating information will not necessarily mean that it has commercial value. Information that is costly to produce will not necessarily have intrinsic commercial value.

5.207 The second requirement of s 47(1)(b) — that it could reasonably be expected that disclosure of the information would destroy or diminish its value — must be established separately by satisfactory evidence. It should not be assumed that confidential commercial information will necessarily lose some of its value if it becomes more widely known. Nor is it sufficient to establish that an agency or person would be adversely affected by disclosure; for example, by encountering criticism or embarrassment. It must be established that the disclosure would destroy or diminish the commercial value of the information.

7. I have identified information that, if released, could reasonably be expected to cause commercial harm to Palantir Technologies Australia Pty Ltd. The documents contain detailed information about the functioning and usage of Palantir software, disclosing methods, techniques diagrams and strategies. The documents relate to ongoing confidentiality obligations with government and commercial partners and could risk competitors adopting or copying Palantir’s approach, techniques and strategies, and this could erode Palantir’s competitive advantage in the marketplace.

8. On this basis, I have decided to exempt access to one document and partially release one document under section 47(1)(b) of the FOI Act..

Third party consultation

9. I decided to consult with Palantir Technologies Australia Pty Ltd regarding their information which was contained in the documents. In response to this consultation, sufficient justification was provided to exempt information within the documents.

David Anderson
 Digitally signed by
 David.Anderson19
 Date: 2020.11.19
 12:19:49 +11'00'

Mr David Anderson
 Accredited Decision Maker
 VCDF Group