



Australian Government
Department of Defence

Reference: EIG/OUT/BN14029780

FOI 336/19/20 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:

- “1 Access to all documents, plans, descriptions and design specifications in relation to a proposed Transformer abutting 20 Wylde Street, Potts Point, proposed to be installed by the Royal Australian Navy. See Navy notice attached;*
- 2 Access to all reports including any Social Impact Report, Heritage Impact Statement, Acoustic Report, Plan of Construction Management, Electro-magnetic radiation estimates and details of the specified capacity (MVA/kVA) and cooling system for the proposed transformer;*
- 3 Contact details of decision-making personnel;*
- 4 Materials proposed to be used, construction time-lines and dirt and dust mitigation measures.*

Excluding pages of documents not related to the proposed Transformer abutting 20 Wylde Street, Potts Point, proposed to be installed by the Royal Australian Navy.”

By subsequent negotiation, the released material is:

Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents, and documents sent to and from [the applicant]. Furthermore, Defence only considers final versions of documents.

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 29 documents as matching the description of the request.
- 4. The decision in relation to each document is detailed in a schedule of documents.
- 5. I have added an FOI reference number and document number to each of the documents, which corresponds with the schedule.

Decision

- 6. I have decided to:
 - a. release one document in full;
 - b. partially release 28 documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is considered exempt under section 47F [public interest conditional exemptions-personal privacy], section 47G [public interest conditional

exemptions-business] and/or section 33(a)(ii) [Documents affecting the defence of the Commonwealth] of the FOI Act; and

- c. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

7. 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);
 - e. consultation with third parties.

Reasons for decision

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

8. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. Upon examination of the document I identified material which I consider could reasonably be regarded as irrelevant to the request.

9. Whilst detail not relevant to the request has been excluded, broad and obvious information has been provided to give the context to information for disclosure.

10. As such I have prepared an edited copy of the document with this irrelevant material deleted.

Section 33(a)(ii) – the defence of the Commonwealth

11. Section 33(a)(ii) of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the defence of the Commonwealth.

12. The guidelines state:

Defence of the Commonwealth

5.34 The FOI Act does not define 'defence of the Commonwealth'. Previous Administrative Appeals Tribunal (AAT) decisions indicate that the term includes: ...

- *Protecting the Defence Force from hindrance or activities which would prejudice its effectiveness ...*

13. The documents contain detailed materials that taken as a whole would reveal plans and infrastructure of a Defence base. Specifically, details of the capacity, design, and siting of various pieces of infrastructure for the Project, notably, the capacity of the subject sub-station and associated cooling system. Having regard to the Guidelines relating to what 'could reasonably be expected' to 'damage' the defence of the Commonwealth, I consider that this information falls within this category. If released, this information could allow nations hostile to the Commonwealth's interests to disrupt and hinder Defence activities and operations, which would prejudice its effectiveness.

14. I have also taken into account 'mosaic theory'. This theory holds that individual pieces of information, when combined with information already in the public domain, can generate a

composite 'mosaic' which could lead to an adversary applying this information and therefore undermining Defence's capability and effectiveness. Having particular regard to the nature of the information within these documents, I have decided that the release of this material could reasonably be expected to cause damage to the defence of the Commonwealth.

15. It is for those reasons that I deem the information exempt under section 33(a)(ii) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

16. Upon examination of the documents, I identified information, specifically the identities of contractor personnel within builder's design reviews and reports, builder's planning documents, builder's environmental and related reports, and emails.

17. In making my decision, I considered whether:

- a. the document contained personal information;
- b. the disclosure of the personal information would be unreasonable; and
- c. the disclosure of this information would, at this time, be contrary to public interest.

18. As a person's identity is apparent or reasonably ascertainable from the identified information, I have decided that it constitutes personal information.

19. In determining whether release of the above personal information is unreasonable, I took into account, inter alia:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the document; and
- c. the availability of the information from publicly accessible sources.

20. Against these criteria, I found:

- a. the specific identified information is not well known;
- b. the persons to whom the information relates is not widely known to be (or to have been) associated with the matters dealt with in the documents; and
- c. the specific identified information is not available from publicly accessible sources.

21. With reference to the assessment above, I consider the release of personal identifying information of third parties, other than the applicant, would be an unreasonable disclosure of personal information and therefore conditionally exempt under subsection 47F(1) of the FOI Act.

22. The applicant requested "contact details of the decision-making personnel" and this is not apparent from the documents. Accordingly, the contact details for the responsible Defence Branch Head and Director for Project N2253B Stage Two Garden Island (East), Critical Infrastructure Recovery Project, are:

- a. Brigadier Matt Galton, DSC, Director General Capital Facilities and Infrastructure (DGCFI), BP26-1-B100, PO Box 7925, CANBERRA BC ACT 2610, email: cfi.execsupport@defence.gov.au
- b. Ms Taj Pabla, Director South East Program, CFI Branch, c/o BP26-1-B100, PO Box 7925, CANBERRA BC ACT 2610, email: cfi.execsupport@defence.gov.au

Section 47G - Public interest conditional exemptions - business

23. Where access has been denied to information under section 47G of the FOI Act, I considered that the material could reasonably be expected to unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs and prejudice the future supply of information to the Commonwealth.

24. Section 47G(1) of the FOI Act states:

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs;

25. Upon examination of the documents I found that they contained the business information of external contractors to Defence. This information when combined with publically available information, could provide commercially sensitive information about Defence contractors, to the marketplace.

26. I also considered the nature of the request and believe the removal of the identified business information would not significantly detract from the value or meaning of the document being sought by the applicant.

27. The Guidelines at paragraph 6.184 state that “*The operation of the business exemption depends on the effect of disclosure rather than the precise nature of the information itself.*” In the context of the documents identified, release of the information identified would be unreasonable due to exposing the business operations of suppliers and making this commercially sensitive information available to the public.

28. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G(1) of the FOI Act.

Section 47F and section 47G - Public interest considerations

29. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed ‘unless (in the circumstances) access to the documents at the time would, on balance, be contrary to the public interest’.

30. The following factors that may be in favour include:

- a. The site is overlooked by residents of various properties, notably 20 Wylde Street, Potts Point NSW;
- b. The public can view the site from various vantage points including from boats on the harbour; and
- c. The visual and aural amenity of the proposed works were a material consideration in the design.

31. I considered that disclosure will promote some of the objects of the FOI Act, as information held by the Government is a national resource. However disclosure of the information identified as exempt in this document would not increase participation in debate on a matter of public importance, nor would it increase scrutiny or discussion of Defence activities. In fact release of the information could reasonably be expected to cause harm to the

privacy of the individuals identified within the document and have an adverse impact on Defence's proper conduct of operations in the public interest.

32. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- a. the protection on an individual's right to privacy;
- b. the competitive commercial activities of an agency;
- c. the interests of an individual or a group of individuals; and
- d. an agency's ability to obtain similar information in the future.

33. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47F and section 47G of the FOI Act.

34. In coming to the above decision I considered factors outlined in section 11B(4) [irrelevant factors] of the FOI Act. None of these factors were taken into account in making my decision.

Third party consultation

35. I decided to consult with third parties regarding their information which was contained in the documents, notably the Managing Contractor for the Project and sub-contractors who produced documentation that was reviewed. In response to this consultation, some of the third parties have objected to the release of their business/personal information. I did not agree with all of their objections.

36. The department is required to advise the third parties of my decision. Documents will be provided when all review rights have been exercised.

Further Information

37. The documents identified were produced for the purposes of the Project and are owned by the Commonwealth through that Project.

38. Additionally, briefing materials and associated documents were discovered for a public meeting on 23 January 2020 to brief owners of apartments at 20 Wylde Street, Potts Point NSW, known as the "SU07 Community Concerns Meeting".

39. Please note that the briefing materials were developed after the closing period for this application, along with an associated lawyer's letter to Defence. After consultation with the relevant Defence staff, and the lawyer for the housing scheme, it was apparent that there was no conflict between that briefing and this application, so these materials are provided as a courtesy to the applicant.

Digitally signed by
PeterEllis
 Date: 2020.03.06
 14:42:49 +11'00'

Peter R Ellis
 Accredited Decision Maker
 E&I Group