



Andrew

Via email only: foi+request-10308-b3170bbe@righttoknow.org.au

6 July 2023

Dear Andrew

Decision on your access application

I refer to your access application made under the *Freedom of Information Act 2016 (FOI Act)*, dated 16 May 2023.

Your application requested a copy of the regular reports made to the ACT Human Rights Commission by:

- BAE Systems Australia Limited
- BAE Systems Australia Defence Pty Ltd
- ASC Shipbuilding Pty Limited
- CEA Research and Development Pty Ltd
- Fujitsu Australia Limited
- Leidos Australia Pty Limited
- Gibbs & Cox (Australia) Pty Ltd
- Raytheon Australia Pty Limited
- Seeing Machines Limited
- Systems Planning and Analysis, Australia Pty Ltd

in accordance with the requirements of the exemptions that have been granted to each of these companies under the *Discrimination Act 1991*.

I note that on 31 May 2023, you clarified the scope of your request to refer to a copy of the above reports from 1 July 2020.

Authority

I am an information officer appointed for the ACT Human Rights Commission, appointed to make decisions about access to government information, in accordance with section 18 of the FOI Act.

Decision

I have identified 25 documents containing information within the scope of your access application. These are outlined in the attached *Schedule of documents*. I have decided to:

- grant partial access to 25 documents.

For the reasons outlined in the attached *Reasons for decision*, I have refused access to some of the information that you have requested under section 35 (1) (c) of the FOI Act. This is because it is contrary to the public interest information.

Disclosure of information

Despite my decision, I have not yet provided you with a copy of the relevant documents. This is because some relevant third parties have objected to disclosure of some of the identified information.

I am required to defer access to this information to give the third party the opportunity to apply for a review of my decision. They will have 20 working days to do so from when my decision is published on our disclosure log (see below).

I will provide you with a copy of the documents when access is no longer deferred or advise you that a review process is underway so you can participate if you wish.

Review rights

You may apply to the ACT Ombudsman to review my decision under section 73 of the FOI Act.

An application for review must be made within 20 days of receipt of this decision notice.

You may submit a request for review of my decision to the ACT Ombudsman by writing in one of the following ways:

Email (preferred): actfoi@ombudsman.gov.au

Post: The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

More information about ACT Ombudsman review is available on the ACT Ombudsman website at: <http://www.ombudsman.act.gov.au/improving-the-act/freedom-of-information>.

Yours sincerely



Dr Helen Watchirs OAM

President and Human Rights
Commissioner / FOI Information Officer

Attachment A – Reasons for decision

1. Material considered.

In reaching my decision, I considered:

- your access application,
- the documents containing the information that fall within the scope of your access application,
- consultations with HRC staff and views of relevant third parties
- the FOI Act, particularly sections 17 (Public interest test), and Schedule 2.2(a)(ii) and 2.2(b)(iv) (factors favouring non-disclosure in the public interest/redaction)
- the *Discrimination Act 1991*
- the *Human Rights Act 2004*

2. Reasons for my decision

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in Schedule 2

I have included below the factors relevant to my decision on access.

Public interest test

I have assessed the information against the factors favouring disclosure and factors favouring non-disclosure in Schedule 2.

On balance, I have decided that it is in the public interest to disclose the information with some redactions relating to personal information of individuals included in the reports as disclosing this information may prejudice these individuals' rights to privacy.

On balance, I have decided that it is in the public interest to disclose the information without redactions in relation to information which may be said to prejudice the business affairs of third parties, which have provided the relevant reports. I have decided that I am not satisfied that their business affairs will be prejudiced for the reasons detailed below.

I have included below my consideration of the relevant factors for your information.

Factors favouring disclosure

2.1(a) Factors favouring disclosure in the public interest.

- (i) promote open discussion of public affairs and enhance the government's accountability
- (iii) inform the community of government operations
- (viii) reveal the reason for a government decision and any background or contextual information that informed the decision.

Factors favouring non-disclosure

2.2 (a) *Factors favouring nondisclosure in the public interest.*

(ii) *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.*

An important consideration is the protection of personal privacy of individuals. I have noted some of the third parties' objection to the release of names, signatures, phone numbers and email addresses of persons involved in providing reports under exemptions pursuant to the *Discrimination Act 1991*. The disclosure of such information would, in my view, likely constitute an unreasonable limitation of their personal privacy. I have reached this conclusion in noting that the redaction of these personal details does not conflict with the factors favouring disclosure identified above.

(x) *prejudice trade secrets, business affairs or research*

As noted in the ACT Ombudsman's *Freedom of Information Guideline 4, Considering the Public Interest, February 2020* (the Guideline), previous FOI decisions establish that 'business affairs' means 'the totality of the money-making affairs' of a company as distinct from 'private or internal affairs'.

The Guideline also notes that the FOI Act should not be used to obtain commercial information about competitors, distorting the proper functioning of markets. Further, the Guideline notes that the disclosure of business information may prejudice business affairs where it would cause reputational harm or increase competitive pressures, for example through the disclosure of pricing information.

I consider that the general nature of the information provided in the reports is more in the nature of 'internal affairs' rather than the 'money-making affairs' of a company and may not meet the threshold for 'business affairs'. Even if it does meet that threshold, I consider that disclosure of such general information would not cause reputational harm or increase competitive pressures. I also consider that the disclosure of general information about the implementation of exemptions from the *Discrimination Act 1991* should not adversely affect the operations of the third parties.

Summary of my decision

In conclusion, I have decided to:

- grant partial access to 25 documents.