



Statement of reasons made under the *Freedom of Information Act 1982*

Decision and reason for decision of

Jane Feeney, Senior Legal Adviser, Information Law, Legal Services & Assurance

Applicant: Mrs P Gale

Decision date: 19 July 2013

FOI reference number: FOI 13-76

Requested documents: [in relation to the Providence Consulting Group Pty Ltd into the site capacity analysis and risk assessment review at Gallipoli, Turkey:]

1. a copy of the invitation document (email, request to tender, request to give a quotation) to apply for the consultancy.
2. a copy of the contract document that resulted from the invitation in 1.
3. a copy of the report that was delivered to your department by the contractors (consultants etc).

Contents

Summary	2
Authority to make this decision	2
Background	2
Charges for providing access.....	2
Relevant documents	2
Decision.....	2
Reasons for decision.....	3
Statement of Reasons	3
<i>Documents disclosing trade secrets or commercially valuable information</i>	3
<i>Public interest conditional exemptions—personal privacy</i>	4
Access to documents.....	5
Your rights of review	5
Internal Review.....	5
Information Commissioner Review	5
Contact us	6
 Schedule 1: Schedule of documents	 7
Schedule 2: Schedule of relevant provisions in the <i>Freedom of Information Act 1982</i>	9

Summary

1. I have made a decision to release the documents relevant to your request in part.

Authority to make this decision

2. I, Jane Feeney, Senior Legal Adviser, Information Law, Legal Services & Assurance, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to make decisions about access to documents in the possession of the Department, in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

Background

3. On 19 May 2013, you made a request for access to documents in the possession of the Department. Your request sought access to:

[in relation to the Providence Consulting Group Pty Ltd into the site capacity analysis and risk assessment review at Gallipoli, Turkey:]

1. *a copy of the invitation document (email, request to tender, request to give a quotation) to apply for the consultancy.*
 2. *a copy of the contract document that resulted from the invitation in 1.*
 3. *a copy of the report that was delivered to your department by the contractors (consultants etc).*
4. On 18 June 2013, the Department wrote to you advising that your request covers documents containing information concerning the business, commercial or financial affairs of an organisation, or a person's business or professional affairs. Accordingly, the Department was required to consult with that organisation or person, under section 27 of the FOI Act, before making a decision on the release of documents. Due to the need for the Department to consult with the third party, you were advised that the period for processing your request was extended by 30 days (in accordance with 15(6) of the FOI Act).

Charges for providing access

5. I have decided that no charges are payable in relation to your request for access to documents in accordance with regulation 3 of the Freedom of Information (Charges) Regulations 1982.

Relevant documents

6. The Department has undertaken a reasonable search of its records and has identified five documents relevant to your request. These documents are listed at Schedule 1.

Decision

7. I have made a decision to release one document in full and four documents in part. The documents and applicable exemption provisions are set out in Schedule 1. Where I have decided to grant access in part, I have provided access to an edited copy of documents, modified by deletions in accordance with section 22(2) of the FOI Act.

Reasons for decision

8. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those finding were based and the reasons for my decision to grant partial access to documents follows.
9. I have taken the following material into account in making my decision:
 - your request dated 19 May 2013;
 - the content of the documents that fall within the scope of your request;
 - Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:
 - Section 11B Public interest exemption – factors
 - Section 22 Access to edited copies with exempt or irrelevant material deleted
 - Section 47 Documents disclosing trade secrets or commercially valuable information
 - Section 47F Public interest conditional exemptions--personal privacy
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines); and
 - the views of a third party consulted by the Department under section 27 of the FOI Act.
10. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

Statement of reasons

11. I have decided to grant access to documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

Documents disclosing trade secrets or commercially valuable information

12. Section 47 of the FOI Act provides that a document is an exempt document if its disclosure 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.
13. Documents 1-4, as listed in Schedule 1, contain information about rates for services and the value of a business contract which may have a commercial value to the Providence Consulting Group Pty Ltd.
14. In order to determine whether this information is exempt under section 47(1)(b), I am required to consider the following:
 - whether the document contains information of commercial value; and
 - whether there is a reasonable likelihood that the value would reasonably be destroyed or diminished through disclosure.

15. Following relevant consultation, I am satisfied that this information is commercially valuable because it is important or essential to the profitability or the viability of a continuing business operation. It is information that, if disclosed, may give a commercial advantage to competitors of the Providence Consulting Group Pty Ltd. Consequently, release is likely to have an adverse effect on the business affairs of the Providence Consulting Group Pty Ltd, particularly in relation to their competitive commercial tenders or other activities. Accordingly, I have concluded that there is a reasonable likelihood that the value would reasonably be destroyed or diminished through disclosure.
16. I am satisfied that parts of documents marked as exempt in accordance with this provision meet the criteria for exemption under section 47.

Public interest conditional exemptions--personal privacy

17. Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person.
18. Documents 1-3, as listed in Schedule 1, contain the names and contact details of persons working for the Providence Consulting Group Pty Ltd. These employees were engaged in various capacities to assist with the preparation of the site capacity analysis and risk assessment review at Gallipoli, Turkey. These individuals were employed by a private organisation and not directly engaged by the Commonwealth Public Service. I consider that these persons are entitled to their privacy when performing duties for a private sector business.
19. After being consulted in accordance with the FOI Act, the employer of these individuals indicated that the personal information is not publicly available and that these persons have an expectation that such information would not be disclosed. As such, they considered release of same would be an unreasonable disclosure of personal information in all of the circumstances.
20. In considering whether disclosure would be unreasonable in the circumstances, I considered whether release would cause stress to the affected individuals, and whether a public purpose would be achieved through release. I am satisfied that some uneasiness may arise for these individuals should the information be released, and that the utility to the public of releasing particulars of individuals engaged to assist with the consultancy would be extremely limited.
21. Accordingly, I have decided that the parts of documents marked as exempt in accordance with this provision meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test:

22. Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.
23. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:
 - (a) disclosure would promote the objects of the FOI Act; and
 - (b) disclosure may promote effective oversight of public expenditure.

24. I also considered the following factors which do not favour disclosure:
- (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
 - (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information;
 - (c) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
 - (d) disclosure could reasonably be expected to harm the interests of an individual or group of individuals.
25. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.
26. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Access to documents

19. The documents released to you in accordance with the FOI Act are enclosed.

Your rights of review

20. If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

21. Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this decision. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days, and can be lodged in one of the following ways:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6316
Email: foi@dva.gov.au

Information Commissioner Review

23. Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this decision, and be lodged in one of the following ways:

Online: www.oaic.gov.au
Post: Office of the Australian Information Commissioner
GPO Box 2999, Canberra ACT 2601
Facsimile: (02) 9284 9666

Email: enquiries@oaic.gov.au

In person: Level 3, 25 National Circuit, Forrest, ACT; or at
Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney, NSW

24. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

Contact us

25. If you wish to discuss this decision, please do not hesitate to contact me using the following details:

Telephone: (02) 6289 6071

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6316

Email: foi@dva.gov.au



Jane Feeney
Senior Legal Adviser
Information Law
Legal Services & Assurance

19 July 2013



Schedule of documents

Applicant: Mrs P Gale

Decision date: 19 July 2013

FOI reference number: FOI 13-76

Requested documents:

[in relation to the Providence Consulting Group Pty Ltd into the site capacity analysis and risk assessment review at Gallipoli, Turkey:]

1. a copy of the invitation document (email, request to tender, request to give a quotation) to apply for the consultancy.
2. a copy of the contract document that resulted from the invitation in 1.
3. a copy of the report that was delivered to your department by the contractors (consultants etc).

Doc ref	Date of document	Document description	Pages	Decision	Exemption provision
1	Undated	STATEMENT OF WORK ACS, PONE LINE & CHUNUK BAIR SAFE SITE CAPACITY CONSULTANCY	1	Partial access	s47, s47F
2	29 June 2011	Email correspondence titled Assistance with Security Risk Assessment: <ul style="list-style-type: none">- Email from Providence Consulting Group to Elizabeth Cosson, former General Manager, Executive Division 19 June 2011 7:57 pm- Email Elizabeth Cosson, former General Manager, Executive Division to Providence Consulting Group 24 June 2011 7:47 am- Email Providence Consulting Group to Elizabeth Cosson, former General Manager, Executive Division 24 June 2011 10:53 am- Email Tim Evans, National Manager Commemorations to Providence Consulting Group 29 June 2011 12:33 pm	4	Partial access	s47, s47F

3	15 July 2011	SERVICES AGREEMENT between the Commonwealth of Australia (as represented by the Department of Veterans' Affairs), the Repatriation Commission and the Military Rehabilitation and Compensation Commission (Australian Business Number 23 964 290824) and Providence Consulting Group Pty Ltd (Australian Business Number 49 117 321 552) for the provision of a site capacity analysis and risk assessment review at Gallipoli, Turkey	21	Partial access	s47, s47F
4	19 July 2011	Contract – Sole Source – providence Consulting Group Pty Ltd for Provision of a site capacity analysis and risk assessment review at Gallipoli, Turkey	1	Partial access	s47
5	24 October 2011	Providence Consulting Group – Final Assessment Report – Risk and Crowd Capacity Assessment for the Gallipoli Commemorative Services for the Department of Veterans Affairs	24	Full access	N/A



Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);

- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:

- (a) prepare the edited copy as mentioned in paragraph (1)(b); and
- (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
 - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
 - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;
 - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document. (see section 11A).

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this 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.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

Public interest conditional exemptions

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (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 with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

- (a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:
qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:
 - (a) a medical practitioner;
 - (b) a psychiatrist;
 - (c) a psychologist;
 - (d) a counsellor;
 - (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).