

Our Ref: 2014/72

12 December 2013

Mr Sam Birbeck

[Foi+request-359-56e8b485@righttoknow.org.au](mailto:Foi+request-359-56e8b485@righttoknow.org.au)

Dear Mr Birbeck,

**Your Freedom of Information Request – Re: Elbit Systems**

I refer to your application dated 21 August 2013, under the *Freedom of Information Act 1982* (the Act) seeking the following:

I am writing to seek information relating to Standing Offer SON1628261 "Supply, implementation and support of an Investigations, Intelligence and Incident Management Solution" awarded to Elbit Systems of Australia Pty Ltd:

- \* a copy of the relevant contract with Elbit Systems
- \* a list of other applicants for this tender, or where this is not possible, the number of other applicants
- \* meeting minutes or memoranda regarding the decision to select Elbit Systems, which explain why Elbit was deemed the most suitable applicant

On 19 September 2013, the AFP issued you with a notice of Intention to refuse to grant access to the documents sought in accordance with section 24AB(2) of the Act.

On 21 October 2013, you provided a revised scope for your request in the following terms removing the grounds for refusal.

1. The overarching Deed of Standing Offer for "Supply, implementation and support of an Investigations, Intelligence and Incident Management Solution" for supplier Elbit Systems of Australia Pty Ltd. (SON1628261)

To clarify, I seek only the overarching deed, and not any related schedules, work orders, or other documents that would make the request impracticably large.

2. The related Tender Evaluation Report for this procurement. For the purposes of identifying this report, I note that in our phone conversation you estimated it to be 280-350 pages in length (I understand this is only an estimate).

Attached at Annexure A to this letter is my decision and statement of reasons for that decision. A "Schedule of Documents" identified as falling into the scope of your request is at Annexure B.

***Information Publication Scheme (IPS)***

As notified to you on 23 August 2013 and in accordance with section 11C of the Act, it has been decided to publish the documents in part in respect of your request. Publication of the documents and any relevant documents will be made on the AFP website at <http://www.afp.gov.au/about-the-afp/information-publication-scheme/routinely-requested-information.aspx> between 5 and 10 days after notification of this decision.

Yours sincerely,



Leonie Amos  
A/Coordinator  
Information Access (Freedom of Information)  
Government Relations

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY  
Sam Birbeck (Right to Know)**

I, Leonie Amos, A/Coordinator, Information Access Team, am an officer authorised under section 23 of the Act to make decisions in relation to the Australian Federal Police.

What follows is my decision and reasons for the decision in relation to your application.

**BACKGROUND**

On 21 August 2013, this office received your application in which you requested:

I am writing to seek information relating to Standing Offer SON1628261 "Supply, implementation and support of an Investigations, Intelligence and Incident Management Solution" awarded to Elbit Systems of Australia Pty Ltd:

- \* a copy of the relevant contract with Elbit Systems
- \* a list of other applicants for this tender, or where this is not possible, the number of other applicants
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To clarify, I seek only the overarching deed, and not any related schedules, work orders, or other documents that would make the request impracticably large.

2. The related Tender Evaluation Report for this procurement. For the purposes of identifying this report, I note that in our phone conversation you estimated it to be 280-350 pages in length (I understand this is only an estimate).

On 9 October 2013, you were notified of the requirement to consult a third party pursuant to subsection 15(6) of the Act.

On 15 November 2013, a further extension of time was sought by the AFP Pursuant to section 15AC of the Act. The outcome of that request is yet to be advised by the OAIC.

## SEARCHES

In relation to this request, the following searches for documents have been undertaken:

- a) a "text" search of the AFP's investigation case management system PROMIS for records relating to "Elbit Systems";
- b) a search of all records held by the relevant line areas within the AFP relating to "Elbit Systems";
- c) a search of the AFP's records management unit for any registry files relating to "Elbit Systems"; and
- d) a search of the AFP's "Correspondence Management System (CMS)" for records relating to "Elbit Systems".

## DECISION

I have identified eight documents totalling 332 pages of information relevant to your request. A schedule of each document and details of my decision in relation to each document is at Annexure B.

I have decided that some of the documents itemised at Annexure B are released with deletions pursuant to subsections 37(2)(b), 47E(d) and 47G(1)(a) of the Act. Some of the documents that relate to your request are exempt in full, pursuant to subsections 37(2)(b), 47E(d) and 47G(1)(a) of the Act.

My reasons for this decision are set out below.

## WAIVER OF CHARGES

Further, given that the request has exceeded all statutory timeframes as outlined at Section 15 of the Act, the AFP is not able to impose any fees or charges as outlined at Regulation 5(2)&(3) of the *Freedom of Information (Charges) Regulations 1982*.

## REASONS FOR DECISION

### ***Folios to which subsection 37(2)(b) apply:***

Subsection 37(2)(b) of the Act provides that:

"(2) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*

- ...  
(b) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which*

*would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;"*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information that would disclose methods and procedures used by the AFP in investigations of breaches of the law. Disclosure of this information would be reasonably likely to prejudice the effectiveness of those methods and procedures as these methods and procedures are not generally known to the public.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 37(2)(b) of the Act.

***Folios to which subsection 47E(d) apply:***

Subsection 47E(d) of the Act provides that:

*"A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- ...
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency;..."*

The parts of the documents identified as exempt under this section of the Act contain information, the release of which, would have a substantial adverse effect on the conduct and procurement of AFP contracts, specifically its ability to negotiate confidentiality terms with external service providers. The information exempted under this section of the Act reveals information obtained and generated through the performance of a contract and which is deemed confidential to the AFP.

I have considered the public interest factors both in favour and against disclosure of the information in these folios.

In relation to the factors favouring disclosure, I believe the following are relevant:

- (a) the general public interest in access to documents as expressed in sections 3 and 11 of the FOI Act; and
- (b) the public interest in people being able to scrutinise the operations of a government agency and in promoting governmental accountability and transparency.

In relation to the factors against disclosure, I believe that the following are relevant:

- (c) the need for the agency to maintain the confidentiality with regard to the subject matter;
- (d) that if information concerning the AFP's confidentiality agreement was revealed, it may have a substantial adverse effect on the conduct and procurement of similar AFP contracts in the future; and
- (e) if such information was disclosed, it may prejudice security, law enforcement and public safety.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (c), (d) and (e) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure the effectiveness of the AFP's current procedures. I find that release of parts of the documents would be an unreasonable disclosure under subsection 47E(d) of the Act.

***Folios to which section 47G apply:***

Section 47G of the Act provides that:

- "(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;..."*

The parts of the documents identified as exempt under this section of the Act contain information which relates to the business affairs of a private organisation.

The information was obtained by the AFP directly from the private organisation during the course of a tender process. It is considered that this private organisation would be unreasonably affected by the disclosure of the information as it directly relates to their business and commercial affairs. It is also considered that the AFP would be unreasonably affected by the disclosure of the information as it would jeopardise the future supply and provision of a required service from that private organisation.

In relation to the factors favouring disclosure, I believe the following are relevant:

- (a) the general public interest in access to documents as expressed in sections 3 and 11 of the FOI Act; and
- (b) the public interest in people being able to scrutinise the operations of a government agency and in promoting governmental accountability and transparency.

In relation to the factors against disclosure, I believe that the following are relevant:

- (c) disclosure would adversely affect the commercial value of the private organisation as it would reveal the methods in which they manage their business and commercial affairs. These processes may be private to them and disclosure would be unreasonable;
- (d) disclosure would also adversely affect the future commercial earnings of the private organisation if information relating to their pricing was disclosed;

- (e) disclosure of the information would compromise the relationship between the AFP and that private organisation which in turn would prejudice the AFP's ability to effectively carry out its expected operations;
- (f) disclosure would also deter the private organisation from providing its service to the AFP which would in turn compromise the AFP's ability to perform its role.

I have considered the public interest factors both in favour and against disclosure and in my view, in relation to these documents, the factors at (c) to (f) against disclosure outweigh the factors in favour of disclosure. I find that release of the documents or parts of the documents would be an unreasonable disclosure under section 47G(1)(a) of the Act.

### **EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED**

In reaching my decision, I have relied on the following documentary evidence:

- ❖ the scope of your application;
- ❖ the contents of the documents listed in the attached schedule;
- ❖ advice from AFP officers with responsibility for matters relating to the documents to which you sought access;
- ❖ consultation with third parties ;
- ❖ *Freedom of Information Act 1982*;
- ❖ Guidelines issued by the Department of Prime Minister and Cabinet; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

**\*\* YOU SHOULD READ THIS GENERAL ADVICE IN CONJUNCTION WITH THE LEGISLATIVE REQUIREMENTS OF THE FREEDOM OF INFORMATION ACT 1982.**

### **REVIEW AND COMPLAINT RIGHTS**

If you are dissatisfied with a Freedom of Information decision made by the Australian Federal Police, you can apply for an internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking an IC review.

You do not need to seek a review by either the AFP or the IC should you wish to complain about the AFP's actions in processing your request.

#### ***REVIEW RIGHTS under Part VI of the Act***

##### ***Internal Review by the AFP***

Section 53A of the Act gives you the right to apply for an internal review in writing to the Australian Federal Police (AFP) within 30 days of being notified of

a decision. No particular form is required. It would assist the independent AFP decision-maker responsible for the internal review if you set out in the application, the grounds on which you consider that the decision should be reviewed.

Section 54B of the Act provides that the internal review submission must be made within 30 days. Applications for a review of the decision should be addressed to:

Government Relations  
Information Access (FOI)  
Australian Federal Police  
GPO Box 401  
Canberra ACT 2601

### ***REVIEW RIGHTS under Part VII of the Act***

#### ***Review by the Information Commissioner (IC)***

Alternatively, Section 54L of the Act gives you the right to apply directly to the IC or following an internal review by the AFP. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision. It would also help if you set out the reasons for review in your application.

Section 54S of the Act provides for the timeframes for an IC review submission. For an *access refusal decision* covered by subsection 54L(2), the application must be made within 60 days. For an *access grant decision* covered by subsection 54M(2), the application must be made within 30 days.

Applications for a review of the decision should be addressed to:

Office of the Australian Information Commissioner  
GPO Box 2999  
Canberra ACT 2601

### ***RIGHT TO COMPLAIN under Part VIIB of the Act***

Section 70 of the Act provides that a person may complain to the IC about action taken by the Australian Federal Police in relation to your application.

A complaint to the IC may be made in writing and identify the agency against which the complaint is made.

The IC may be contacted on 1300 363 992. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.