



Australian Government
Department of Defence

Reference: Objective ID: BN2994506

FOI 169/18/19 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the email of 21 January 2019, in which Mr Josh Morrison sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act) of the Accredited Decision Maker's decision dated 21 December 2018.

2. The applicant's request was for access to the following documents under the FOI Act:

"The attached media release from the Minister for Veterans' Affairs, Minister for Defence Personnel and Minister Assisting the Prime Minister for the Centenary of ANZAC where it states, "Following an agreement signed by the Chief of Air Force, Air Marshal Leo Davies, and Young Diggers' Dog Squad (YDDS) Chairman of Directors on 10 August 2018, YDDS will train and provide three rescued dogs and their associated equipment to Air Force."

This request is for the documents mentioned by the minister and referred to in paragraph 2 of this email.

excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request."

Contentions

3. In summary, the applicant requested an internal review of the original decision.

4. The applicant contends that the name of the business is publicly available in the Minister's media release. The applicant also contended the material exempted under section 47D [Public interest conditional exemptions – financial or property interests of the commonwealth].

5. The purpose of this statement of reasons is to provide the applicant with a fresh decision relating to the documents.

Reviewing officer

6. I am authorised to make this internal review decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

Documents subject to internal review

7. Taking into account the applicant's contentions, one document (the MOU) is the subject of this internal review.

Internal review decision

8. Taking into account the fact that some information in the documents is publicly available, I have decided to vary the original decision by releasing further information in the MOU. As this particular information appears in the remaining documents that fall within the scope of the request, I have applied the same principle and decided to release further information in those documents.

9. I have decided that the remaining material in the documents is considered exempt under section 47D [Public interest conditional exemptions – financial or property interests of the commonwealth] and section 47G [Public interest conditional exemption – business] of the FOI Act.

10. Information such as signatures is considered irrelevant to the scope of the request and has therefore been removed under section 22(1)(b)(ii) of the FOI Act.

Material taken into account

11. In arriving at my decision, I had regard to:

- a. the scope of the applicant's request and subsequent internal review application;
- b. the original decision;
- c. the content of the documents subject to the internal review;
- d. relevant provisions in the FOI Act;
- e. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
- f. consultation with a third party in the internal review process.

Findings and reasons

Section 47D

12. In considering this exemption, I referred to the Guidelines which state, at paragraph 6.92, that:

"A substantial adverse effect may be indirect. For example, where disclosure of documents would provide the criteria by which an agency is to assess tenders, the agency's financial interest in seeking to obtain best value for money through a competitive tendering process may be compromised."

13. I note also from the Guidelines that, for this conditional exemption to apply, any potential effect from disclosure must be both substantial and adverse (at paragraph 6.91).

14. I am satisfied upon examining the documents that the original decision maker was correct in applying section 47D as, in his words:

"I found that the documents contained information which relates to sensitive financial considerations. Release of this information would reveal costs borne by Defence as

part of a Memorandum of Understanding (MOU) with another organisation that may result in the Commonwealth not being able to achieve the best value for money in future contracts”

15. After careful deliberation, I consider section 47D could be applied to withhold this particular information. The public interest considerations are discussed below.

Section 47G

16. Subsection 47G conditionally exempts a document if its disclosure under the FOI 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 adversely affect the business or commercial or financial affairs; or
- b. could reasonably be expected to prejudice the future supply to the Commonwealth.

17. I note that the use of the word ‘could’ in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself.

18. Upon examination of the material, I identified information unique to the MOU between a third party and the Department of Defence. I found that this information is related to the business affairs of a lawful business of a third party.

19. I determined that this information is not publicly available and consider should the material be released, it could reasonably be expected to have an adverse effect on commercial and financial business affairs of a third party. I found that, if this specific information were to be released, it would allow other businesses to use the information in future negotiations.

20. Consequently, I have decided that the material is conditionally exempt under section 47G of the FOI Act.

Public interest considerations – 47D and 47G

21. In determining whether to release the information conditionally exempt under section 47D and 47G, I considered the Guidelines together with a range of factors that favour access to a document set out in sub-section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

22. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to the public interest. Specifically, I considered if disclosure of the documents would:

- a. promote the objects of the FOI Act;
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure; and
- d. allow a person to access her or his personal information.

23. I consider that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. While I note that disclosure may increase scrutiny or discussion of Defence activities, I consider there is also a public interest in maintaining the confidentiality of the material. It could also reasonably be expected to prejudice and agency's ability to obtain similar information in the future.

24. Furthermore, I consider that release of the information could harm the commercial and financial affairs of a third party and that the harm to the third party's activities and interests outweighs any benefits that may be gained by public scrutiny.

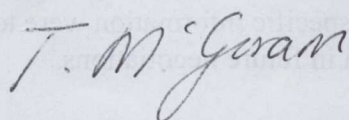
25. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47D and 47G of the FOI Act.

Third party consultation

26. I decided to consult with a third party regarding their business information contained in the documents. In response to the consultation, the third party objected to the release of their business information in which I did not agree with all of their objections.

27. Section 27(7) of the FOI Act states that Defence must not consider disclosing to the applicant the documents in the form approved for release until the result of all review or appeal provisions are confirmed.

28. As I did not agree with all of the third party's objections, Defence is required to advise the third party of my decision. The third party has 30 days from the date of my decision to exercise their review rights. As such, the documents will not be provided until the third party has exhausted their review rights.



Dr Tom McGoram
Decision Maker – Internal Review

20 February 2019