



24 June 2019

Guido Orefice  
Via the RightoKnow Website

By email: [foi+request-5430-2dc3bb17@righttoknow.org.au](mailto:foi+request-5430-2dc3bb17@righttoknow.org.au)

Dear Guido Orefice

### Your Freedom of Information Request dated 23 May 2019

I refer to your request of 23 May 2019 under the *Freedom of Information Act 1982* (the FOI Act) seeking access to the following:

*A document titled 'Business Case' (ARPANSA-PM-TMP-002), specifically the sections:*

- *Why are we doing this project? What problem are we trying to solve? What is the current state? Try to summarise in five dot points.*
- *Summary of business case*
- *What are the risks of doing or not doing the project?*

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests and this letter sets out my decision on your request.

### Decision

I have identified one document as relevant to your request and I have decided to release the document to you in part.

My reasons for making this decision are set out in Attachment A to this letter.

Attachment B is a schedule which sets out the identified document and my decision in relation to the document.

I have enclosed extracts of the provisions of the FOI Act relevant to your request and my decision at Attachment C to this letter.

### Review Rights

You are entitled to seek a review of this decision. Attachment D sets out your review and complaint rights.

## Contacts

If you require clarification of any of the matters set out in this letter please contact Gemma Larkins on 02 9541 8311 or [foi@arpansa.gov.au](mailto:foi@arpansa.gov.au).

Yours sincerely

*Gemma Larkins*

Gemma Larkins  
Legal Officer in the Office of the General Counsel



## ATTACHMENT 'A' – REASONS FOR DECISION

### Material taken into account

In making my decision, I had regard to the following:

- The terms of your request;
- The content of the documents to which you sought access;
- Advice from ARPANSA officers with responsibility for matters relating to the documents to which you sought access;
- The relevant provisions of the FOI Act;
- ARPANSA's guidance material on the FOI Act; and
- Guidelines on FOI, available on the Office of the Australian Information Commissioner website.

### Findings of fact and reasons for decision

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that document or part of document are set out below.

### Exemptions

The schedule of documents identifies the relevant sections of the FOI Act under which exemptions have asserted in respect of the document. My reasons for finding particular exemptions are set out below.

#### Section 22(1)(a)(i) of the FOI Act– material which is exempt

Where a decision is made to refuse access to a document on the ground that it is an exempt document, section 22 of the FOI Act allows an agency to make an edited copy of the document with the exempt material deleted. You have been provided with an edited copy of the document. The schedule identifies the relevant section of the Act under which the exempt material has been deleted. My reasons for claiming the particular exemption are set out below.

#### Section 47G - business

Section 47G of the FOI Act conditionally exempts documents where disclosure would disclose information concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of the information would, or could reasonably be expected to, unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

The section of the document redacted under section 47G of the FOI Act discloses the pricing of a business who entered into a lawful commercial arrangement with ARPANSA. This information is not in the public domain. The release of this commercially sensitive pricing information would, or could reasonably be expected to, unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs as it would provide its competitors with an unfair competitive advantage.

Accordingly, I am satisfied that if the pricing information was released there would be an unreasonable adverse effect, on the lawful business, commercial or financial affairs of the organisation which was engaged by ARPANSA.

Accordingly, in my view the document is conditionally exempt under section 47G.

### **Public interest**

Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A). In considering this issue, I have taken into account the following public interest factors in favour of and against disclosure:

#### *Factors in favour of disclosure*

The FOI Act sets out four factors favouring access, which must be considered if relevant. They are that disclosure would:

- promote the objects of the FOI Act
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her personal information (s 11B(3)).

I have also taken into consideration any guidelines issued by the Australian Information Commissioner issued under section 11B(5) of the FOI Act.

The release of the pricing would promote the objects of the FOI Act, however, the pricing is only a small component of the document which is otherwise released in full. The redaction of the pricing does not take away from the remaining information in the document.

The information does not appear to be considered a matter of public importance. Therefore, the release of the pricing would be unlikely to contribute to informing debate on a matter of public importance.

The disclosure of the pricing information would only provide a small degree of oversight of public expenditure as it is a one off payment without any context on why the contractor was selected.

#### *Factors against disclosure*

- the information was provided as part of a commercial transaction and is not otherwise available from public sources;
- disclosure of commercially sensitive pricing information could prejudice the competitiveness of the business lawfully engaged by ARPANSA
- Third parties should be free to bid for government work without the risk of losing their commercially sensitive information.
- Release of commercially sensitive pricing would unreasonably affect third parties in relation to their lawful business, commercial or financial affairs.

In my view, the factors against disclosure outweigh the factors in favour of disclosure. Accordingly, I find that it would, on balance, be contrary to the public interest to release the document in full. Therefore, I have redacted the pricing and have released the remainder of the document.



**ATTACHMENT 'B' – SCHEDULE OF RELEVANT DOCUMENTS**

<b>Doc No.</b>	<b>Document Title</b>	<b>Pages</b>	<b>Released</b>	<b>Section</b>
1	Business Case' (ARPANSA-PM-TMP-002)	5	Part	s47G



## ATTACHMENT C – RELEVANT FOI ACT PROVISIONS

### 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).

## 11C Publication of information in accessed documents

### *Scope*

- (1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:
  - (a) personal information about any person, if it would be unreasonable to publish the information;
  - (b) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
  - (c) other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;
  - (d) any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).
- (2) The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).

### *Publication*

- (3) The agency, or the Minister, must publish the information to members of the public generally on a website by:
  - (a) making the information available for downloading from the website; or
  - (b) publishing on the website a link to another website, from which the information can be downloaded; or
  - (c) publishing on the website other details of how the information may be obtained.

## 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.

### **31B Exempt documents for the purposes of this Part**

A document is *exempt* for the purposes of this Part if:

- a. it is an exempt document under Division 2; or
- b. it is conditionally exempt under Division 3, and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note 1: A document is an *exempt document* for the purposes of this Act (see subsection 4(1) if:

- a. it is exempt under this section; or
- b. it is exempt because of section 7 (exemption of certain persons and bodies); or
- c. it is an official document of a Minister that contains matters not relating to the affairs of an agency or a Department of State.

Note 2: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

### **47G Public interest conditional exemptions—business**

- (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; or
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) 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.



- (4) 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.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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



**ATTACHMENT D INTERNAL REVIEW OF DECISION BY ARPANSA**

You have the right to apply for an internal review of this decision in accordance with Part VI of the *Freedom of Information Act 1982* (FOI Act). If you make an application for review, the CEO of ARPANSA will appoint an officer of ARPANSA to conduct a review and make a completely fresh decision on the merits of the case.

If you wish to exercise this review right, you must apply in writing for a review of the decision within 30 days of receipt of this letter. You do not have to pay any fees or proceeding charges for internal the review. No particular form is required to apply for review although it is desirable to set out in the application the grounds on which you consider that the decision should be changed.

The application for review of the decision should be sent to [foi@arpansa.gov.au](mailto:foi@arpansa.gov.au) or:  
FOI & Privacy Officer  
ARPANSA  
619 Lower Plenty Road  
YALLAMBIE VIC 3085

If you make an application for internal review and a decision is not made by us within 30 days of receiving the application, the original decision will be deemed to be affirmed in accordance with section 54D of the FOI Act and you will be entitled to make an application to the Information Commissioner in accordance with sections 54L and 54M of the FOI Act. Similarly, if you are dissatisfied with ARPANSA’s decision on internal review, you may also apply for review of this decision to the Information Commissioner.

**Review of Decision by the Australian Information Commissioner (AIC)**

You do not have to seek an internal review of the decision directly from ARPANSA. You may wish to seek a review of the decision from the AIC. If so, you must apply in writing and you can lodge your application in a number of ways. More information is available on the AIC’s website at: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

**Complaints to the AIC or the Commonwealth Ombudsman**

You may complain to the Commonwealth Ombudsman or the AIC concerning action taken by an agency in the exercise of the powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Ombudsman or the AIC will conduct a completely independent investigation of your complaint.

You may complain to the Ombudsman either orally, in person, on-line or in writing and to the AIC in writing or by completing the on-line form. Relevant addresses are:

Commonwealth Ombudsman GPO Box 442 CANBERRA ACT 2601.  Web: <a href="http://www.ombudsman.gov.au">www.ombudsman.gov.au</a>	The Australian Information Commissioner GPO Box 2999 <b>OR</b> GPO Box 5218 Canberra ACT 2601 Sydney NSW 2001  Web: <a href="https://www.oaic.gov.au/freedom-of-information/foi-complaints">https://www.oaic.gov.au/freedom-of-information/foi-complaints</a>
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