

23 September 2014

Anonymous

Dear Applicant

Request for access to documents under the *Freedom of Information Act 1982 (Cth)*

I refer to your correspondence dated 27 June 2014, received by Defence Housing Australia (**DHA**) on 27 June 2014, in which you requested access under the *Freedom of Information Act 1982 (Cth)* (**the FOI Act**) to the following documents:

This request relates to the job description, duties, responsibilities and remuneration of the role, not the individuals.

- *Role description, duties and responsibilities of DHA's directly employed Sales Consultants, Relationship Managers and Senior Relationship Managers ('internal sales resources');*
- *Remuneration bands applicable to DHA's 'internal sales resources' under the DHA Enterprise Agreement 2012-2014;*
- *Details of any remuneration package, additional incentives, commissions or bonuses offered to DHA's 'internal sales resources', which are not covered by the DHA Enterprise Agreement 2012-14;*
- *Details of any Key Performance Indicators, targets or milestones relating to DHA's 'internal sales resources' in the performance of their duties.*

Decision maker

I am an authorised decision-maker under section 23 of the FOI Act.

Decision

DHA has identified 6 documents as falling within the scope of your FOI request. A schedule of the documents is set out at **Attachment A (the Schedule)**.

I hereby decide that:

- (a) document 6 is partially and conditionally exempt under section 47E of the FOI Act and disclosure would be contrary to the public interest. Those parts of the document that are not conditionally exempt are to be released;

HEAD OFFICE

26 Brisbane Avenue Barton ACT 2600
Telephone: 139 DHA Fax: 02 6222 2200
Email: info@dha.gov.au Internet: www.dha.gov.au
ABN 72 968 504 934

- (b) documents 5 and 6 are partially and conditionally exempt under section 47F of the FOI Act and disclosure would be contrary to the public interest. Those parts of those documents that are not conditionally exempt are to be released; and
- (c) documents 1, 2, 3 and 4 are to be released in full.

Material on which my findings of fact are based

I based my findings of fact on the following material:

- (a) the content of the documents to which you sought access;
- (b) the relevant provisions of the FOI Act;
- (c) the Freedom of Information Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**the OAIC Guidelines**); and
- (d) responses to third party consultation undertaken by DHA under section 27A of the FOI Act.

Reasons

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

Section 47E – Certain operations of agencies

Section 47E of the FOI Act provides:

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

...

- (c) *have a substantial adverse effect on the management or assessment of personnel by...an agency;*
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

In relation to subsection 47E(c), the OAIC Guidelines set out that where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in subsection 47E(c), namely, that:

- (a) an effect would reasonably be expected following disclosure; and
- (b) the expected effect would be both substantial and adverse.

For this exemption to apply, the documents must relate to either:

- (a) the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; or

- (b) the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

Document 6 sets out the salary package information of the DHA Sales team. Release of this information would have a substantial and adverse effect on the management and assessment of DHA personnel as DHA employees would have access to the salary packages of their colleagues which would potentially cause disruption to the performance of those DHA employees as they compare their salary package with that of other DHA employees.

In summary, release of the salary package information contained in the document will have a substantial and adverse effect on the management and assessment of DHA personnel by DHA. The information relates to the DHA Sales team which is a very small team. Release of the salary package information will affect the morale and relationships of that team and DHA's ability to manage its employees. This may then make it difficult for DHA to recruit and retain employees.

The fact that release of the material in the above document would have a substantial and adverse effect on the management and assessment of DHA personnel is further supported by the fact that information released under FOI is not subject to any confidentiality conditions. Disclosure of information under FOI is effectively disclosure to the world at large.

Under subsection 11A(5) of the FOI Act, an agency is required to give the FOI applicant 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. Factors that favour access are set out in section 11B(3) of the FOI Act. A further non-exhaustive list of factors that favour access are listed in the Information Commissioner Guidelines at paragraph 6.25.

I consider that the factors favouring access in this case are as follows:

- the extent to which disclosure would promote the objects of the FOI Act; and
- release of the documents would increase scrutiny and review of government activities, and facilitate public access to information generally.

However, I consider that these factors are outweighed by the following factors against release:

- release of the salary package information presents a risk to the efficient operation of the DHA human resources team as DHA cannot properly manage its personnel if DHA employees have access to the salary package information of other DHA employees;
- DHA is a competitor with other private sector property management businesses and has a need to attract and retain good staff and maintain a stable sales team. If the information was released and was obtained by DHA's competitors, that would have an impact on DHA's operations; and
- potential impact on privacy within DHA because the team is small, members of the team may be able to identify or infer the possible identities of individuals mentioned in the documents.

Following consideration of these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the salary package information contained in document 6 is outweighed by the public interest against disclosure. This is primarily because, on balance, very limited public purpose would be achieved through the release of this information.

I am satisfied that the material contained in document 6 is conditionally exempt under section 47E of the FOI Act. In the alternative, and for the same reasons discussed above, I am satisfied that the information contained in the document would be conditionally exempt under subsection 47E(d) of the FOI Act as well. Furthermore, I have decided that on balance it would be contrary to the public interest to release the material. Accordingly, I have decided to release the document with the material redacted.

Section 47F – Public interest conditional exemption - Personal Privacy

Section 47F of the FOI Act relevantly provides:

- (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.*

'Personal information' is defined in section 4 of the FOI Act as:

Information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Documents 5 and 6 contain the personal information of a number of different DHA employees.

Documents 5 and 6 contain the mobile phone numbers of DHA employees. The DHA employees use the mobile phones for both business and personal use. Further, release of the mobile phone numbers would enable people to contact the DHA employees outside of work hours. Release of the mobile phone numbers would therefore constitute an unreasonable disclosure of personal information on that basis.

Document 5 contains the personal information of an individual being considered for a position within DHA, including the proposed salary for that individual. Disclosure of the personal information contained in the documents would enable the identity of the individuals concerned to be reasonably ascertained. Further, the information is not publicly

available and would cause stress to the individual concerned if released, particularly to other DHA employees.

I find that the release of this information would constitute an unreasonable disclosure of personal information for the following reasons:

- (a) information released under FOI is not subject to any confidentiality conditions and the personal information contained in the documents, once released under FOI, may be used against the particular DHA employees who are identified in the documents;
- (b) the personal information contained in the documents is not publicly known or available; and
- (c) disclosure would not shed light on the workings of government.

Under subsection 11A(5), the FOI Act requires that the agency or Minister give the FOI applicant 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.

To determine if the disclosure would be contrary to the public interest, I have weighed up the public interest for and against disclosure under subsection 11A(5) of the FOI Act, and have taken into account:

- (a) the extent to which disclosure would promote the objectives of the FOI Act;
- (b) the extent to which disclosure would assist in informing debate on a matter of public importance; and
- (c) the extent to which disclosure would prejudice the protection of an individual's right to privacy.

In relation to the first and second of these matters, I find that the personal information contained in the documents would not assist in informing debate on a matter of public importance or promote the objects of the FOI Act. The personal information contained in the documents is limited to the identities of DHA employees and the salary package information of a DHA employee.

Disclosing the personal information contained in the documents is likely to cause harm or stress to the individuals concerned. As disclosure under an FOI process is effectively disclosure to the world at large, release of the personal information contained in the documents would give rise to an unacceptable risk of harassment or harm if it were to come into the hands of other DHA employees who may be receiving a different salary package.

Following consideration of these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the personal information in documents 5 and 6 is outweighed by the public interest against disclosure. This is primarily because, on balance, very limited public purpose would be achieved through the release of this information, and the release of the information would cause harm or stress to the individuals concerned. In the circumstances, I consider that the protection of privacy is a factor that outweighs any factors in favour of disclosure.

I am satisfied that the personal information in documents 5 and 6 is conditionally exempt under section 47F of the FOI Act. Furthermore, I have decided that on balance it would be

contrary to the public interest to release the personal information. Accordingly, I have decided to release the documents with the personal information redacted.

Section 22 – Deletion of exempt or irrelevant material

Section 22 of the FOI Act provides that if an agency decides that granting access to a document would disclose information that would be exempt or reasonably be regarded as irrelevant to the request, then, where it is reasonably practicable to provide a copy with deletions, such a copy should be provided.

For the reasons discussed above, I have found that the following documents contain some material which is exempt under the FOI Act:

- (a) document 6 is partially and conditionally exempt under section 47E of the FOI Act and disclosure would be contrary to the public interest. Those parts of the document that are not conditionally exempt are to be released;
- (b) documents 5 and 6 are partially and conditionally exempt under section 47F of the FOI Act and disclosure would be contrary to the public interest. Those parts of those documents that are not conditionally exempt are to be released.

I have decided to apply section 22 of the FOI Act to delete exempt material in respect of the documents at paragraph (b) above, in order to facilitate the release of the remainder of those documents to you, as set out in the Schedule at **Attachment A**.

Provision of documents

Documents that are not subject to any exemptions under the FOI Act are to be released in full. In circumstances where documents are subject to exemptions and it is practical for the exempt matter to be deleted, those documents will be released in part.

Charges

In response to DHA's preliminary assessment of charges letter and your email dated 20 August 2014, you have agreed to pay the charges as set out in paragraph 6. The outstanding amount of \$36.20 should be made out to Freedom of Information at Defence Housing Australia and forwarded to 26 Brisbane Avenue, Barton, ACT 2600. On receipt of the outstanding charges, the documents will be forwarded to you.

Appeal Rights

If you do not agree with my decision, you may apply for a review of the decision. I have attached an information sheet that explains your rights of review under the FOI Act (see **Attachment B**).

Yours sincerely,

Pip Sackley
Executive Officer