

11 November 2014

Anonymous
[REDACTED]

Dear Applicant

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

I refer to your correspondence dated 9 September 2014, received by Defence Housing Australia (DHA), in which you requested access under the *Freedom of Information Act 1982 (Cth)* (the FOI Act) to the following documents:

1. *Outcomes of the SLB Ballot between July 2012 and July 2014 containing the following statistics on a weekly basis:*
 - a. *Total number of properties released in the ballot each week*
 - b. *Number of bids received for each property in the ballot*
 - c. *Number of bidders put forward per Sales Resource and whether that Sales Resource was a DHA staff member or a 'contracted sales consultant'*
 - d. *Number of properties secured in the Ballot by each Sales Resource*
 - e. *An identifier to indicate whether the person running the SLB Ballot Process each week (nominally the 'Sale & Leaseback Operations Manager') is a different person than other weeks, due to leave, illness, delegation, etc. To be clear we seek only information relating to which weeks 'person A' ran, versus 'person B' or 'person C', and not identifying information. We believe this information is recorded in the weekly ballot spread sheet filename, along with the date and other information.*
2. *Any discrepancies in the above statistics between the following sources for the corresponding weekly ballot results and any reasons given for the discrepancies:*
 - a. *The bid submission requests that are uploaded to the 'Property Bids' section of the client file in the Runway CRM.*
 - b. *The ballot template file created for each week of the ballot and saved in the corresponding weekly folder in the Salesbids mailbox.*
 - c. *The ballot results emailed out each week, including to the Salesbids email account (along with various DHA managers) under the subject "Results for information" or other similar subject.*
3. *The number of occasions where there has been a manual intervention in either the bides or the results of the weekly ballot process, including:*
 - a. *The reason it for the intervention*
 - b. *The sales resource identifier for the affected bid/client*
 - c. *The DHA Resource identifier operating the ballot process at the time*
 - d. *At who's direction did the intervention occur*
4. *Any email communications or other directives from the MD, COO, General Manager Portfolio Operations, National Sales Manager or other senior executives to the Sale & Leaseback Operations team, including the Sale & Leaseback Operations Manager, regarding manual intervention, manipulation, overriding or alteration of the bidding process or results, either prior to or after*

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the ballot process has been run, including any resource identifiers applicable within the document.

Decision maker

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

Decision

I have identified a total of 10 documents listed at Attachment A.

Documents 2-10 have been created as a representative selection utilising the parameters of your FOI request. The complete records relating to the Ballot process from the Sale & Leaseback database would have been too large to reproduce.

I consider documents 1,7,8,9 and 10 are exempt under section 47G of the FOI Act if its disclosure will disclose information concerning the business, commercial or financial affairs of an organisation and that disclosure would, or could reasonably be expected to, unreasonably affect Defence Housing Australia adversely in respect of its lawful business, commercial or financial affairs.

I have decided that documents 1,7,8,9 and 10 are exempt and will not be released.

Documents 3-5 contain personal information for the purposes of section 47F of the FOI Act. I have decided to release these documents with redactions under section 22(1)(c) of the FOI Act.

Where a decision is made to refuse access to a document, the release of a copy of the document with the exempt matter deleted should be considered under section 22(1)(c) of the FOI Act. Accordingly, I have decided to release documents 3,4 and 5 with redactions of personal information.

Document 2 and 6 will 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**);

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 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 3,4 and 5 contain the names of DHA external contractors, the mobile phone numbers of DHA employees and contain the personal information of DHA investors. Release of this information in full may cause stress or harm to the individuals and it is on that basis that release of the information would be unreasonable.

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 individuals 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 these documents, 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 mobile phone numbers, the identities of DHA external contractors as well as the personal information of DHA investors.

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 47G – Business information

Section 47G of the FOI Act provides:

- (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 the agency.*

The information in documents 1,7,8,9 and 10 will be conditionally exempt under section 47G of the FOI Act if its disclosure will disclose information concerning the business, commercial or financial affairs of an organisation and that disclosure would, or could reasonably be expected to, unreasonably affect that organisation adversely in respect of its lawful business, commercial or financial affairs.

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

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 the extent to which disclosure:

- would promote the objectives of the FOI Act;
- would assist in informing debate on a matter of public importance; and

- would harm the interests of DHA.

The information contained in the document may add to the information that is in the public domain concerning the SLB Program at DHA and in doing so would promote the objectives of the FOI Act. However, the public interest in releasing further details of the SLB Program necessarily needs to be balanced against the potential commercial harm to the business affairs of DHA from that information being made public.

Following consideration of these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the business information in the abovementioned document 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 harm the business affairs of DHA.

I am satisfied that the business information in the abovementioned document is conditionally exempt under section 47G of the FOI Act. I have decided that on balance it would be contrary to the public interest to release the information. Accordingly, I have decided not to release the documents to you.

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.

I have decided to apply section 22 of the FOI Act to delete exempt material in respect of the documents 3,4 and 5, 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 2 and 6 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. Once you have paid the relevant charges in full, the relevant documents will be emailed to you.

Charges

In response to DHA's preliminary assessment of charges letter and your email dated 7 November 2014, you agreed to pay the charges. The charges for this request have been reviewed and reports have been created by Defence Housing Australia to reduce the creation and copying of documents. Decision making time was reduced however, the creation of a report involved an increased amount of time for search and retrieval.

Search and retrieval time:	80	80 hours @ \$15 per hour	\$ 1,200.00
Decision-making time:	10	10 hours @ \$20 per hour	\$ 200.00
Copying of documents:	34	34 pages @ 10 cents per page	\$ 3.40
GST (Exempt):			Nil
Sub total:			\$ 1,403.40
Less		5 hours of free decision making time	\$ 100.00
		Deposit received	779.40
Total			\$ 524.00

The revised outstanding amount is \$524.00 and should be made out to the 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