

05 October 2016

s47F

Dear s47F

I refer to your correspondence dated 11 September 2016, in which you have requested access under the *Freedom of Information Act 1982* (Cth) (the FOI Act) to the following document:

I wish to obtain a copy of the service agreement between Department of Defence and Defence Housing Australia for the provisioning of housing to service members

Decision maker

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

Decision

DHA has identified 1 document, consisting of 164 pages as falling within the scope of your FOI request. A schedule of the documents is set out at Attachment A (the schedule).

I have decided to refuse access to Document 1 under the FOI Act on the basis that it is an exempt document under section 47 (trade secrets and commercially valuable information) of the FOI Act.

The reasons for my decision are set out below.

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 47 – Documents disclosing trade secrets or commercially valuable information

Section 47 of the FOI Act relevantly provides:

- 1) A document is an exempt document if its disclosure under this Act would disclose:
 - a) Trade secrets; or
 - b) Any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Document 1 contains information relating to the contract agreement for housing and related matters between the Department of Defence and Defence Housing Australia (DHA).

The OAIC Guidelines relevantly provide:

5.184 The term 'trade secret' is not defined in the FOI Act. The Federal Court has interpreted a trade secret as information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown.

5.185 The Federal Court referred to the following test in considering whether information amounts to a trade secret:

- The information is used in a trade or business;*
- The owner must limit the dissemination of it or at least not encourage or permit widespread publication;*
- If disclosed to a competitor, the information would be liable to cause real or significant harm to the owner of the secret.*

5.186 Factors that a decision maker might regard as useful guidance but not an exhaustive list of matters to be considered include:

- The extent to which the information is known outside the business of the owner of that information*
- The extent to which the information is known by person engaged in the owner's business*
- Measures taken by the owner to guard the secrecy of the information*
- The value of the information to the owner and to his or her competitors*
- The effort and money spent by the owner in developing the information*
- The ease or difficulty with which others might acquire or duplicate the secret.*

5.187 Information of a non-technical character may also amount to a trade secret. To be a trade secret, information must be capable of being put to advantageous use by someone involved in an identifiable trade.

The information contained in Document 1 is commercially valuable to the Department of Defence and DHA and relates to the operation of a continuing commercial activity undertaken, that being providing housing and related matters to the Members of the Australian Defence Force.

I am also satisfied that the contents of Document 1 are not publicly available. The commercial value of the document is only known to a number of staff at the Department of Defence and DHA. This information is not publicly available, and is treated by the Department of Defence and DHA as being commercial-in-confidence.

The release of the information contained in Document 1 would be a release to the world at large and as a result, would reveal trade secrets if it were disclosed. Accordingly, I find that the document is, therefore, exempt under section 47(1)(a). Should you wish to narrow the scope of your request to a specific clause, release of that particular clause may be considered.



Material on which my findings of fact are based

I based my findings of fact on the following material:

- a) The terms of your freedom of information request;
- b) The content of the documents to which you sought access;
- c) The relevant provisions of the FOI Act; and
- d) 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
- e) Advice from DHA staff whose duties relate more closely to the matters referred to in the document.

Liability to pay charges

I have decided not to impose any charges.

Rights of review

If you do not agree with my decision in relation to release of documents you are entitled to apply for an internal review of the decision and/or external review by the Australian Information Commissioner. Information on your review rights is at Attachment B.

Yours sincerely

s47F

Pip Sackley
Executive Officer



