

14 December 2012



By email: [REDACTED]

Dear [REDACTED]

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

I refer to your request dated 16 November 2012 made under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) for access to the following information held by Defence Housing Australia (DHA):

- 1.1 *I would like to request information from DHA under the Freedom of Information Act. The documents I request are all the maintenance request from tenants (My Family) and maintenance repairs reports from maintenance carried out at the property during the period from 01/07/2011 through to 01/11/2012. The property in concern is [REDACTED] and my family were the tenants during this period and seek clarification on some maintenance issues during this period.*
2. DHA acknowledged receipt of your request on 19 November 2012.
3. I am an officer authorised under section 23 of the Act to make decisions in respect of requests for access to documents. My decision and the reasons for that decision are set out below.

Charges

4. I have decided not to impose any charges for processing your FOI request.

Legislative background

5. The Act provides a right of access to information in the possession of Commonwealth agencies, limited only by exceptions and exemptions provided for in the Act.
6. I have identified 104 documents listed in the attached Schedule of Documents (**Attachment A**) as falling within the scope of your request.
7. I have released documents 1, 2, 9, 12, 23, 26, 30-32, 39, 54, 56, 57, 61-104 in full.
8. I have decided to refuse access to documents 3-8, 10, 11, 13-22, 24, 25, 27-29, 33-38, 40-53, 55 and 58-60 under the FOI Act on the basis that it is an exempt document under section 47 (trade secrets and commercially valuable information). I have decided to release these documents with redactions under Section 22(1)(c) of the FOI Act.
9. The reasons for my decision are set out below.

HEAD OFFICE



FOI Legislation

10. The FOI Act provides a general right of access to documents in the possession of Commonwealth agencies, subject to certain exceptions and exemptions provided under that Act.
11. Section 47 provides that a document is exempt if disclosure under the FOI Act would disclose:
 - (a) trade secrets (section 47(1)(a)); 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 (section 47(1)(b)).

Material on which my findings of fact are based

12. I based my findings of fact on the following material:
 - the content of the identified document;
 - the relevant provisions of the FOI Act;
 - the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**OAIC Guidelines**);
 - advice from DHA staff whose duties relate more closely to the matters referred to in the document; and
 - the content of your FOI request.

Reasons for decision

Section 47(1)(b) – commercially valuable information

13. DHA purchases a wide range of goods and services via a tender process. In doing so, it follows the principles of open and effective competition. Upon examination of the documents listed in paragraph 8, I have found that they contain information relating to the terms of a contract between DHA and its repair and maintenance contractors and are conditionally exempt under section 47(1)(b). This information is not publicly available, and is treated by DHA as being commercial-in-confidence.
14. In determining whether the document is exempt under section 47(1)(b), I am required to consider:
 - whether the document contains information of a commercial value; and
 - whether there is a reasonable likelihood that the value would reasonably be destroyed or diminished through disclosure.

15. The OAIC Guidelines relevantly provide (at paragraph 5.175):

5.175 Whether information has a commercial value, and the extent of any destruction or diminution of the value, are questions of fact for the decision maker. Information has commercial value to an agency or to another person if it is valuable for the purposes of carrying on the commercial activity in which that agency or other person is engaged. That information may be valuable because it is important or essential to the profitability or the viability of a continuing business operation. The following factors may assist in deciding in a particular case whether information has a commercial value:

- *whether the information is known only to the person in question, or the extent to which it is known by others (information that is known to some but not all of the person's competitors may nevertheless have commercial value);*
- *whether the information confers a competitive advantage on the person against any competitors: for example, if it lowers the person's cost of production or allows it access to markets not available to competitors;*
- *whether a genuine 'arm's-length' buyer is prepared to pay to obtain that information;*
- *whether the information is still current or out of date (out of date information may no longer have any value);*
- *whether disclosing the information would reduce the value of the business, undertaking or organisation: perhaps as reflected in the price of its shares.*

16. 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 a copy of the documents listed in paragraph 8 with redactions of the commercial-in-confidence information.

Rights of review

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

FOI Disclosure Log

18. In accordance with the requirements of section 11C of the FOI Act, Defence Housing Australia is required to publish, on its website, information released under the FOI Act within 10 working days of the applicant being given access to documents. Defence Housing Australia will also publish the decision notice, with any personal and business information deleted. The information published does not include personal information or the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable. Other information not published also includes that which the Australian Information Commissioner determines is unreasonable to publish.

Please do not hesitate to contact me if you have any questions about this matter.

Yours sincerely,



Pip Sackley
Executive Officer

Attachments:

- A. Schedule of Documents.
- B. Your review rights.