

6 October 2015

§47F  
[REDACTED]  
[REDACTED]

Dear §47F [REDACTED]

I refer to your correspondence dated 2 September 2015, in which you requested access under the *Freedom of Information Act 1982 (Cth)* (the FOI Act) to the following documents:

- *Parts pertaining to maintenance of service residents (sic), ei (sic) scope of works conducted on behalf of Defence including Defence's contribution to this part of the contract.*
- *Pricing of maintenance and repairs.*
- *Members obligations if any, towards these costs*
- *The tendering price and scope of works for §47F [REDACTED] and §47F [REDACTED].*
- *Scope of works covered in the commonwealth expense clean of a service residence between tenancies.*

### **Decision maker**

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

### **Decision**

DHA has identified 6 documents, consisting of 24 pages, as falling within the scope of your FOI request. A schedule of the documents is set out at Attachment A (the schedule).

Documents 1, 4, 5 and 6 will be released in full.

I have decided to refuse access to Documents 2 and 3 under the FOI Act on the basis that they are exempt documents under section 47 (trade secrets and commercially valuable information) 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 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 2 contains information relating to the contract price agreement for the painting of Service Residences for the Darwin region. Document 3 contains information relating to the contract price for cleaning Service Residences in the Darwin region. Document 4 contains information relating to agreed Halcyon cleaning charges on a regional level.

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.

The Guidelines relevantly provide:

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 product or allows it access to markets not available to competitors;
- Whether a genuine 'arms-length' buyer is prepared to pay to obtain the 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.

As part of any DHA invitation to tender, applicants are notified that tenders will be treated by DHA as commercial in confidence documents and DHA will undertake all reasonable steps to ensure Tenders are confidential.

The information contained in Documents 2, 3 and 4 are commercially valuable to DHA and relates to the operation of a continuing commercial activity undertaken, that being painting and cleaning of DHA Service Residences.

I am also satisfied that the contents of Document 2, 3 and 4 are not publicly available. The commercial value of the documents are only known to a small number of staff at DHA and in particular, it is not known by competing companies for tenders. Release of the information would provide tenderers with a benchmark against which they could undermine the competitive process of tenders.

The release of the information contained in document 2 and 3 would be a release to the world at large and as a result the commercial value of the information in the document would be diminished or destroyed if it were disclosed. Accordingly, I find that the document is exempt under section 47(1)(b).

Section 11A(5) of the FOI Act requires me to, nevertheless, give the applicant access to the information unless, in the circumstances access to it would at the time and, on balance, be contrary to the public interest. I have weighed the factors for and against the release of this information and decided that it is not in the public interest to release it. The factors affecting my decision include that it is neither well known or readily available from publicly accessible sources. To protect the commercial value of the information, DHA has decided not to release the information under FOI.

I consider that certain parts of Document 4 would be exempt from disclosure under section 47 of the FOI Act. I consider the information contained in these pages is still current and not out of date, and as a result remain of commercial value to Defence Housing Australia.

Information contained in Document 4 is commercially valuable to DHA and relates to the operation of a continuing commercial activity undertaken, that being the cleaning of Defence properties across Australia. Accordingly, I find that certain parts of document 4 are exempt from disclosure under section 47(1)(b) of the FOI Act on the basis that the information has commercial value to DHA and the release of the information could reasonably be expected to diminish if it was disclosed.

### **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**).

### **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.

## **FOI disclosure log**

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.

## **Further information**

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

Yours sincerely

s47F

A large black rectangular redaction box covers the signature area, with the text 's47F' visible in the top-left corner.

Pip Sackley  
Executive Officer