

16 December 2011

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

1. I refer to your request of 12 December 2011 for access to information held by Defence Housing Australia under the *Freedom of Information Act 1982*.
2. 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.

Background

3. On 12 December 2011 you lodged an FOI request by email as below:

From:

Sent: Monday, 12 December 2011 8:36 PM

To: Freedom of Information

Subject: below request is an application for the purposes of the FOI Act

Dear Sir/Madam,

I have been attempting to purchase a property in Lyons, NT.

Each time a property release is requested the response is usually soon, shortly or next week, I have also been informed there is still a stock of 7 for that area.

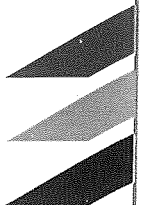
Under the Freedom of Information Act, I would please like to ascertain information regarding the following:

- How it is determined when property is to be released*
- Who is given preference when multiple persons wish to purchase.*
- A list of properties still to be released in Lyons, NT and tentative release date.*
- And finally, the best point of contact for sales/salesman complaints.*

Contact details for any return correspondence are:

4. Mr Ross Jordan, Company Secretary, acknowledged receipt of your request on 13 December 2011.

HEAD OFFICE



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.

Decision

6. In relation to the information you have requested, I have determined as follows:
- a. *How it is determined when property is to be released:* this information has commercial value that could reasonably be expected to be diminished if disclosed. Accordingly, under the *Freedom of Information Act, 1982* Section 47, Clause (1), DHA claims an exemption from supplying this information to you,
 - b. *Who is given preference when multiple persons wish to purchase:* this information has commercial value that could reasonably be expected to be diminished if disclosed. Accordingly, under the *Freedom of Information Act, 1982* Section 47, Clause (1), DHA claims an exemption from supplying this information to you,
 - c. *A list of properties still to be released in Lyons, NT and tentative release date:* this information has commercial value that could reasonably be expected to be diminished if disclosed. Accordingly, under the *Freedom of Information Act, 1982* Section 47, Clause (1), DHA claims an exemption from supplying this information to you,
 - d. *And finally, the best point of contact for sales/salesman complaints.* Mechanisms for complaints, compliments and feedback regarding the purchase of DHA properties are on the DHA corporate website: (<http://www.dha.gov.au/contact/process/yourfeedback.html>). The best direct point of contact is Sarah Tyrrell, National Manager, Sales and Product Marketing. She can be contacted by telephone on (02) 6217 8521 or email sarah.tyrrell@dha.gov.au.

Further Information

7. I draw your attention to (<http://invest.dha.gov.au/dha/home/info/Buyingdhaproperty>) on the DHA investment website which includes the following general advice:
- DHA advertises all properties listed for sale as part of the Sale and Leaseback program on our investment website (www.invest.dha.gov.au).
 - Generally, properties can be viewed up to a week in advance of being released (they are identified as 'coming soon' and the release date and time are stated).
 - Prospective purchasers can be emailed alerts about properties and/or locations of interest to them. Information can be supplied by other means where email is not suitable.
 - Each property listing sets out the price; weekly rent; lease term; construction year; living and land area; energy efficiency rating (ACT properties only); and a description of amenities and inclusions. Photos, a floor plan and location map can also be viewed. Where available, an indicative depreciation schedule and sustainability declaration (QLD properties only) can be downloaded.

- DHA requires investors to provide written evidence of their financial capability (i.e. loan pre-approval or approval in principle if borrowing, or confirmation of cash or superannuation assets) prior to attempting to secure a property. This has mutual benefit as it assists in identifying locations and/or properties that may suit the purchaser's investment goals and qualify intent to purchase.

Rights of review

8. 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 A.

Yours sincerely



Mike Swan

For Company Secretary

Attachments:

- A. FOI Fact Sheet 12 – Freedom of information – Your review rights

FOI Fact Sheet 12

Freedom of information – Your review rights

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 2999, Canberra ACT 2601

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

In person: Level 3, 25 National Circuit

Forrest, ACT, or at

Level 8, Piccadilly Tower,

133 Castlereagh Street, Sydney,

NSW

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to

grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. The fee for lodging an AAT application is \$777 (at November 2010), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information
telephone: 1300 363 992
email: enquiries@oaic.gov.au
write: GPO Box 2999, Canberra ACT 2601
or visit our website at www.oaic.gov.au