



Reference: DSII/2016/R25578268

**FOI 171/15/16 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

*“The final report for security investigations logged onto the Defence Policing & Security Management System (DPSMS) from 16 April 2015 to the date of my application.”*

**FOI decision maker**

2. I am the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

**Documents identified**

3. I identified seven documents as matching the description of the request.

4. The decision in relation to each document is detailed in a schedule of documents at Enclosure 1.

5. I have added an FOI reference number and Serial number to each of the documents, which corresponds with the schedule.

**Decision**

6. I have decided to release the identified documents with material deleted, in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is exempt under the following sections:

33 – Documents affecting national security, defence or international relations

47C – Public interest conditional exemptions – deliberative processes

47E – Public interest conditional exemptions – certain operations of agencies

47F - Public interest conditional exemptions – personal privacy

47G - Public interest conditional exemptions - business

My reasons for those exemptions are set out below.

### Material taken into account

7. In making my decision, I had regard to:
- a. the terms of the request;
  - b. the content of the identified documents in issue;
  - c. relevant provisions in the FOI Act;
  - d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
  - e. advice from Ministerial and Executive Coordination and Communication Division (MECC), Joint Logistic Command (JLC), Capability, Acquisition and Sustainment Group (CASG, formerly known as the Defence Materiel Organisation (DMO)), Estate and Infrastructure Group (EIG), Defence People Group (DPG) and Defence Legal, whose duties relate to the matters referred to in the documents; and
  - f. third party responses to formal consultation.

### Reasons for decision

#### Section 33 – National Security

8. Upon examination of the documents, I found that some of the documents contained information and material relating to defence capabilities and associated international agreements, as well as the management and business functions associated with the security of sensitive defence materiel and equipment, which if released could adversely affect the defence and the security of Australia.

9. Whilst the OAIC guidelines (5.1 to 5.7) notes that documents that fall under Part IV Division 2, which includes s33 of the FOI Act, are exempt documents, it is considered that meaningful non-exempt edited copies of the subject documents (5.3 and 5.7), are able to be provided to the applicant.

10. The key relevant factors against providing disclosure include:
- a. That the documents contain sensitive information or matter relating to the acquisition of operational capabilities of the Department of Defence and would be exempt under s33 (a) (i) and (ii).
  - b. That the documents contain sensitive information or matter communicated in confidence to the Department of Defence by or on behalf of an authority of a foreign government and hence would be exempt under s33 (b).

11. I have formed the view that the disclosure of the information contained in the documents *in-toto* would potentially adversely impact the security of specific areas of Defence operational capability and associated international agreements.

12. On balance, I have concluded that while disclosure of the document *in-toto* would be contrary to the public interest for the above reasons, I consider that disclosure of the document with exempted information and matter being deleted, s22 (1) (b), (c) and (d), would on balance be in the public interest as it would both promote the objects of the FOI Act and publicly demonstrate the policies and procedures used within Government to conduct and manage its range of defence capability acquisition programs.

### Reasons and Public Interest - Section 47C – deliberative processes

13. Upon examination of the documents, I found that some of the documents contained information relating to deliberative processes which were under way within the Department, and the nature of which if released could adversely affect the functions undertaken within the Defence Legal Division of the Department.

14. In balancing the public interest in this case, I have considered the following factors in favour of disclosure:

- a. Promoting the objects of the FOI Act, in particular, that information held by the Government is considered to be a national resource, s11B (3) (a).
- b. That disclosure would publicly demonstrate and promote the activities and processes used within Government, including in Defence, to manage and appropriately protect information, especially when it is of a sensitive nature.
- c. That an edited version of the documents, with conditionally exempted matter being deleted, is able to be made available to the applicant under s22 (1) (b).

15. I have considered the following factors against disclosure:

- a. That the document has been prepared for deliberative purposes in relation to the functions of the Legal Division of the Department of Defence and could be exempt under s47C (1) (a).
- b. Notwithstanding the fact that exemption could be considered under s47C (1) (a) – deliberative processes, the principal factor against disclosure is the substantial adverse effect disclosure would have on the proper and efficient conduct of operations of the Legal Division, which is exempt under s 47E (d). (Refer to paragraphs 17 – 20).
- c. That the documents contain private and personal information of named individuals directly associated with the subject deliberative process and functions of the Legal Division of the Department of Defence, which is exempt under s47F – Personal Privacy.

16. I have formed the view that the disclosure of the information contained in the document would reasonably be expected to have an adverse impact on the proper and efficient conduct of operations of the Legal Division of the Department of Defence. Disclosure could also impact the conduct of associated deliberative processes within the Legal Division. Notwithstanding these impacts, I have on balance, concluded that while disclosure of the document *in-toto* would be contrary to the public interest, disclosure of the document with exempted matter being deleted, s22 (1) (b), (c) and (d), would be in the public interest as it would both promote the objects of the FOI Act and publicly demonstrate and promote transparency in the activities and processes used within Government to manage and protect sensitive information.

### Reasons and Public Interest – Section 47E – certain operations of agencies

17. Upon examination of the documents, I found that some of the documents contained information relating to certain (business) operations of the Department of Defence, and the nature of which if released could adversely affect the conduct of proper and efficient operations within Defence (s47E (d)), as well as potentially have a significant adverse effect of the management of personnel by the Department of Defence (s47E (c)).

18. In balancing the public interest in this case, I have considered the following factors in favour of disclosure:

- a. Promoting the objects of the FOI Act, in particular, that information held by the Government is considered to be a national resource, s11B (3) (a).
- b. That the business operations of the Department of Defence be conducted in a manner that is as open and transparent as possible, without compromising the security of; information associated with the planning and conduct of operational activities, and information relating to military capabilities, especially where sensitive information or activities are involved.
- c. That an edited version of the documents, with conditionally exempted matter being deleted, is able to be made available to the applicant under s22 (1) (b).

19. I have considered the following factors against disclosure:

- a. That the documents identify and contain matter, relating to the conduct of Defence business, including the planning and conduct of operations and specific programs, some of which support whole of government initiatives and the planning and provision of logistic support, especially where this information is sensitive and/or classified, s47E (d).
- b. That the documents identify and contain matter relating to the management and assessment of personnel within the Department of Defence, s47E (c).

20. I have formed the view that the disclosure of the information contained in the documents would potentially adversely impact on the proper and efficient conduct of operations, including sensitive business operations across a range of areas within the Department of Defence. Additionally, and importantly, disclosure of information in the documents would have a significant adverse effect on the management and assessment of personnel by the Department of Defence. On balance, I have concluded that while disclosure of the document *in-toto* would be contrary to the public interest for the above reasons, I consider that disclosure of the document with exempted matter being deleted, s22 (1) (b), (c) and (d), would on balance be in the public interest as it would both promote the objects of the FOI Act and publicly demonstrate and promote the activities and processes used within Government to conduct and manage its business, and operations, including the management of personnel information in a manner which while providing transparency, is mindful and respectful of the privacy of individuals and their personal information as well as other sensitive business programs, activities or matter.

### Reasons and Public Interest– Section 47F – personal privacy

21. Upon examination of the documents, I found that all of the documents contained information relating to personal information of individuals both within and outside of the Department of Defence, which if disclosed would involve an unreasonable disclosure of personal information about any person under s47F.

22. In balancing the public interest in this case, I have considered the following factors in favour of disclosure:

- a. Promoting the objects of the FOI Act, in particular, that information held by the Government is considered to be a national resource, s11B (3) (a).
- b. That the business operations and management practices of the Department of Defence be conducted in a manner that is as open and transparent as possible, without compromising the privacy of individuals or any personal information about a person s47F (1).
- c. That an edited version of the documents, with conditionally exempted matter being deleted, is able to be made available to the applicant under s22 (1) (b).

23. I have considered the following factors against disclosure:

- a. That all the documents contain matter which if disclosed would constitute an unreasonable disclosure of personal information about a number of Defence employees and other non-Defence civilians s47F (1).
- b. That the personal information of the respective individuals contained within the documents is not well known both within the Department of Defence or more broadly, s47F (2) (a), nor is this personal information of the respective individuals available from publicly accessible sources s47F (2) (c).
- c. All of the respective areas within the Department of Defence referenced in the subject documents; (the Ministerial and Executive Coordination and Communication Division (MECC), Joint Logistic Command (JLC), Capability, Acquisition and Sustainment Group (CASG, formerly known at the Defence Materiel Organisation (DMO)), Estate and Infrastructure Group (EIG), Defence People Group (DPG) and Defence Legal), were consulted in regard to the disclosure of any matter within the subject documents and in particular disclosure of any personal information about any individuals. All agreed that the sections of text within the document mark for non-disclosure under personal privacy, were appropriate to respect and protect the privacy of both Defence employees and non-Defence civilians referenced in the subject documents. I note that the names and employment details of Defence officials have not been removed where there inclusion in the documents is due to their official capacity.

24. In taking the above factors into account, I have formed the view that the disclosure of matter in the documents relating to the privacy and personal information of any person would be an unreasonable as it would have a significant adverse effect on both Defence personnel and non-Defence civilians, and potentially a range of personnel management policies, procedures and practices in the Department of Defence. Notwithstanding these adverse effects, I have on balance, concluded that while disclosure of the document *in-toto* would be



contrary to the public interest for the above reasons, the disclosure of the document with exempted matter being deleted, s22 (1) (b), (c) and (d), would be in the public interest as it would both promote the objects of the FOI Act and publicly demonstrates the personnel management policies, procedures and practices used within the Department of Defence, and in particular, the policies and practices to provide appropriate protection of the privacy of any person, including their personal information.

### **Reasons and Public Interest – Section 47G - business**

25. Upon examination of the documents, I found that some of the documents contained information relating to the business affairs and process of commercial companies contracted to the Department of Defence for the provision of support services or functions, including capability associated services, to a number of important areas across Defence, the nature of which if released could adversely affect the functions provided under the service support contracts. It should also be noted that some of the associated support services have security implications for some aspects of defence capability. That the documents contain sensitive information or matter associated with the conduct of business operations between a named commercial company contracted to the Department of Defence for provision of capability support services. This information is considered exempt under s47G – Public interest conditional exemptions – business.

25. In balancing the public interest in this case, I have considered the following factors in favour of disclosure:

- a. Promoting the objects of the FOI Act, in particular, that information held by the Government is considered to be a national resource, s11B (3) (a).
- b. That disclosure would publicly demonstrate and promote oversight of public expenditure within the Department of Defence, s11B (3) (c), with specific reference to the policies and procedures used within Defence to manage and conduct routine business using contracted commercial providers.
- c. That an edited version of the documents, with conditionally exempted matter being deleted, is able to be made available to the applicant under s22 (1) (b).

26. I have considered the following factors against disclosure:

- a. That the documents contain matter and information relating to the management of business practices of a contracted commercial provider to Defence, and in particular to their personnel management procedures. ss47G (1) (a) and (b).
- b. That the documents contain material and information relating to a number of sensitive business processes managed and conducted by a contracted commercial provider on behalf of Defence, s47G (1) (A).

27. I have formed the view that the disclosure of the matter and information contained in the document *in-toto* would potentially adversely impact the management and provision of a range of support services and functions. These adverse effects would impact both the contracted commercial provider and the Department. Additionally the disclosure of the documents *in-toto* would be unreasonable as it would have a significant adverse effect relating to the privacy and personal information of any person would be an unreasonable as it would have a significant adverse effect on the Defence personnel and non-Defence civilians, and

potentially a range of personnel management policies, procedures and practices used in the Department of Defence, as well as personnel management policy and practices used by contracted commercial providers to Defence, for example, their capacity and ability to provide appropriate personnel for employment in sensitive or classified programs or business functions.

28. However, while I have concluded that while disclosure of the document *in-toto* would be contrary to the public interest, I consider that disclosure of the document with exempted matter being deleted, s22 (1) (b), (c) and (d), would, on balance, be in the public interest. This approach would both promote the objects of the FOI Act and publicly demonstrate the businesses policies and procedures used within the Department of Defence to effectively manage public expenditure, including through the use of commercial contracts that may encompass service and operational support functions.

### **Reasons for decision – Section 22**

29. As noted above a s22 decision has been applied to each document as it is considered that all of the documents are able to be appropriately edited to delete any matter or information to which a conditional exemption has been applied. Additionally, it has been identified that each of the documents contain some material or information which is considered irrelevant to the applicant's request. This material/information has been deleted under s22 (1) (b) (ii).

30. Taking into account the departments policy to exclude personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of an FOI request, some material as been removed as it is considered irrelevant.

### **Third party consultation**

31. I decided to consult with third parties regarding their information which was contained in the documents. In response to this consultation, some of the third parties have objected to the release of their business/personal information. The department is required to advise the third parties of my decision. Documents will be provided when all review rights have been exercised.

### **Further Information**

32. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

Yours sincerely



Charles Vagi  
Accredited Decision Maker  
Associate Secretary Group

15 April 2016