



Reference: AF28536182

**FOI 217/16/17 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:

*1. All records in respect of communication and/or correspondence between Defence and each of the following parties in connection with PFAS contamination on or in the vicinity of Defence facilities and that relate to the period of 1 January 2000 to 1 February 2017:*

- a. Professor Jennifer Field from Oregon State University in the USA;*
- b. any commercial banks or lending institutions in Australia;*
- c. the Australian Property Institute or any of its members;*

*2. All de-identified PFAS blood test results or data supplied by Sullivan Nicolaides Pathology to Defence in connection with Oakey in respect of the period from 1 January 2015 to 1 February 2017 (including the results reported by Heffernan in 2015).*

*excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents.*

**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 58 documents as matching the description of the request.

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

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

**Decision**

6. I have decided to:

- a. release 52 in documents in full;
- b. partially release 5 documents 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 considered exempt under section 47F [public interest conditional exemptions-personal privacy], and/or section 47G [public interest conditional exemptions-business] of the FOI Act;
- c. deny access to one document under section 47F [public interest conditional exemptions-personal privacy] of the FOI Act;

- d. refuse access to documents of the request, specifically Item 1a, under subparagraph 24A(1)(b)(ii)[Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
- e. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

### **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); and
  - e. advice received from third parties.

### **Reasons for decision**

#### **Section 47F - personal privacy**

9. Upon examination of the documents, I identified information, specifically addresses and information relating to personal circumstances, belonging to persons other than the applicant. This material satisfies the definition of personal information in section 4 of the FOI Act.

10. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the documents; and
- c. the availability of the information from publicly accessible sources.

11. Against those criteria I have found that this specific information is not readily available from publicly available sources, nor is the information well known. I have therefore decided that specified material identified in the documents is conditionally exempt pursuant to subsection 47F of the FOI Act.

#### **Section 47G – business**

12. Upon examination of the documents, I identified business information of a third party. Under section 47G of the FOI Act, a document is conditionally exempt if it discloses information:

*concerning a person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*

*(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.*

13. I note that the use of the word ‘could’ in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.

14. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that the effect of disclosing the identified material could have an adverse effect on a company as disclosure of their capabilities and methods could diminish the competitive nature of the business and could affect the profitability of their business operations.

15. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G of the FOI Act.

#### **Public interest considerations – sections 47F and 47G**

16. Section 11A(5) provides that if a document is conditionally exempt, it must be disclosed *“unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest”*.

17. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines together with a range of factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. Disclosure may promote some of the objectives of the FOI Act, as information held by the Government is a national resource and release of these documents serves to inform the community of the Government’s operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community.

18. Disclosing certain information obtained by Defence in the course of engaging with financial institutions would reveal addresses and other personal details of third parties. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the confidentiality of some material contained in the documents in order to protect personal privacy.

19. There is a strong public interest in not releasing information that would unreasonably affect a business. I took into account the nature of the material and found that its disclosure in this instance would not significantly promote the objects of the Act, or inform debate on a matter of public importance. However, disclosure has the potential to cause harm to the business and risk Defence’s commercial relationship with service providers.

20. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of certain exempt material contained in the documents. Therefore, I have decided that it would be contrary to the public interest to release the information considered exempt under sections 47F and 47G of the FOI Act

21. None of the factors listed in section 11B(4) [irrelevant factors] were taken into account when making my decision.

#### **Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received**

22. Section 24A(1) of the FOI Act states:

- (1) An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency’s or Minister’s possession but cannot be found; or

(ii) *does not exist.*

### **Searches conducted for Item 1a**

23. Searches were undertaken within Estate and Infrastructure Group of both physical files and Defence's electronic records management system (Objective) using the search term 'Jennifer Fields' and 'Oregon State University'. No records in relation to direct correspondence and/or communications between Defence and Dr Jennifer Fields could be located.

24. Based on the above, I am satisfied that no documents could be found matching the scope for Item 1a. Accordingly I have decided to refuse access to this item under section 24A of the FOI Act.

### **Further Information**

25. 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.

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Ms Kim Arthur

Accredited Decision Maker  
Estate and Infrastructure Group

April 2017