



**Australian Government**  
**Department of Defence**

Defence Reference: FOI 165/20/21

Reference: BM21326172

**FOI 165/20/21 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:

*“As referenced in FOI 462/19/20 (attached), I am seeking:*

*Item 1 - The request for tender (or similar document) calling for submissions to provide advice to the Department of Defence on the Future Submarine Program Competitive Evaluation Process (limited only to any request for tender that relates to the role undertaken by EY in Item 2);*

*Item 2 - The contract between the Department of Defence and Ernst and Young to undertake the advisory role in relation to the Future Submarine Program Competitive Evaluation Process; and*

*Item 3 - A document that identifies the name of the organisation that is undertaking or will undertake the ISO 37001 certification for the Naval Group.”*

**FOI decision maker**

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

**Documents identified**

3. I identified six 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 three documents in full; and
- b. partially release three documents 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.

**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 received from Ernst and Young (EY) as a third party to the documents in scope; and
- f. advice from officers within the Department of Defence.

### **Reasons for decision**

#### **Section 47F - Personal privacy**

8. Upon examination of the documents, I identified personal information, specifically identifying individuals from both Defence and EY.
9. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:
- 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;
  - c. the availability of the information from publicly accessible sources; and
  - d. the effect the release of the personal information could reasonably have on the individual.
10. Against the criteria, I found:
- a. the specific personal information listed is not well known;
  - b. the individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt in the documents; and
  - c. the information is not readily available from publicly accessible sources.

11. The release of personal information of individuals could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of information of third parties would be an unreasonable disclosure of personal information and is conditionally exempt under section 47F(1) of the FOI Act.

#### **Section 47G – Business Affairs**

12. Upon examination of the document, I identified the business information of EY that if released, would, or could reasonably be expected to adversely affect EY in respect of its business or professional affairs.

13. Section 47G(1) of the FOI Act states:

*(1) A document is conditionally exempt if its disclosure under this Act would disclose 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.*

14. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

15. My public interest considerations are set out below.

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

16. In assessing whether disclosure is on balance, contrary to the public interest, I considered the Guidelines together with a range of factors set out in section 11B(3) [public interest exemptions-factors favouring access] of the FOI Act, which favours access to a document:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) inform debate on a matter of public importance;*
- (c) promote effective oversight of public expenditure;*
- (d) allow a person to access his or her own personal information.*

17. I note that disclosure of the requested information may promote some of the objects of the FOI Act. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

18. On balance, I consider the benefit to the public from disclosure is outweighed by the benefit to the public from withholding the information. In particular, I note that the document in question discloses the commercial arrangements between the Commonwealth and EY for the delivery of services. If released, this information may adversely affect EY in negotiating future commercial arrangements and also adversely affect Defence's negotiating position for future contracts.

19. I would also contest that if the information in the document were to be disclosed, it could reasonably be expected to prejudice the future supply of information to the Commonwealth under section 47G(1)(b).

### **Third party consultation**

20. I decided to consult with a third party regarding their information, which was contained in the documents. In response to this consultation, the third party has objected to the release of their business/personal information. I agree with these objections.

### **Further Information**

21. Item 3 of the FOI request pertains to information specific to Naval Group business. The Department of Defence has not identified any documents that meet the scope of Item 3.

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