



**DEFENCE FOI 081/21/22 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:

*“I request access to the most recent report regarding the Defence Terrestrial Communications Network project produced by the Department for the Digital Transformation Agency's Digital Investment Division”*

**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 one document as matching the description of the request.

**Exclusions**

4. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered the final version of the document.

**Decision**

5. I have decided to:
- partially release the document 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 47D [conditional exemption - financial or property interests of the Commonwealth], section 47E(d) [conditional exemption – certain operations of agency], and 47G(1)(a) [conditional exemption-business] of the FOI Act.

**Material taken into account**

6. In making my decision, I had regard to:
- the terms of the request;
  - the content of the identified document in issue;
  - relevant provisions in the FOI Act; and
  - the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

## **Reasons for decision**

### **Section 47D – Financial or property interests of the Commonwealth (Conditional exemption)**

7. Section 47D of the FOI provides that a document is conditional exempt if its disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or an agency.

### **Section 47E(d) – Certain operations of agencies (Conditional exemption)**

8. Section 47E(d) provides that a document is conditionally exempt

*if its disclosure under this Act would, or could reasonably be expected to, do any of the following:...*

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.'*

9. The Guidelines at paragraph 6.123 advise that, where the document relates to certain operations of agencies, the decision maker must address whether the predicted effect must bear on the agency's 'proper and efficient' operations; that is, the agency is undertaking its expected activities in the expected manner.

10. The document contains information on the Department's risk assessment and overall assessment of the project. I consider the release of this information would or could substantially adversely affect the proper and efficient conduct of the Department by:

- a. reducing the effectiveness of the new capability, by releasing information that would enable it to be exploited by adversaries and providing them with details of identified weaknesses with the project
- b. impacting the Department's ongoing working relationship with the third party
- c. reduce the flow of information between the Department and the third party
- d. potentially delay completion of the project as new further mitigation strategies may need to be developed and implemented to prevent the identified weaknesses from being exploited, and
- e. potentially delay other projects whose completion is dependent on the finalisation of the DTC capability being operational.

11. Given the above, I find that the release of the document could or would substantially affect the efficient operation of the Department of Defence. I have therefore decided that information contained within the document is conditionally exempt pursuant to subsection 47E(d) of the FOI Act.

### **Section 47G (1)(a) – Business (Conditional Exemption)**

12. Section 47G of the FOI Act states:

*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...”*

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

14. The Guidelines explain:

*The test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect....These considerations require a weighing of a public interest against a private interest, preserving the profitability of a business, but at this stage it bears only on the threshold question of whether the disclosure would be unreasonable.*

15. The Guidelines also state:

*The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. Nevertheless, the information in question must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.*

16. The Guidelines go on to state:

*The term ‘business affairs’ has been interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs’.*

17. The documents contain information in relation to sensitive cost information, risk assessments and status updates that relate to the project being completed by the third party business. This information has commercial and financial sensitivities for the third party business. I consider that the affected document contains the business information of the third party.

18. Where access has been denied to information in accordance with section 47G of the FOI Act, I considered that the material would, or could reasonably be expected to have an adverse effect on the identified third party business.

19. Taking into account the above factors, I consider that the release of the information would be an unreasonable disclosure of business information and is conditionally exempt under section 47G of the FOI Act.

**Public interest considerations – sections 47D, 47E(d) and 47G(1)(a)**

20. 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 subsection 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

21. The factors in favour of disclosing the information that I consider to be relevant are:

- a. *promotes the objects of the FOI Act, as information held by the Government is a national resource;*

- b. informing debate on a matter of public importance; and*
- c. promotes effective oversight of public expenditure.*

22. While I accept there is a public interest in ensuring that Defence manages projects effectively and efficiently, it would, on balance, be contrary to the public interest to release information that could harm the progression of the project, its successful completion and compromise the Department's ability to successfully negotiate changes to the project.

23. The harm to the third party company can be considered to be the exposure and erosion of the third party's company reputation and future opportunities.

24. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- a. an agency's ability to obtain similar information in the future
- b. the competitive commercial activities of an agency
- c. the interests of an individual or group of individuals.

25. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the document that matches the scope of the request. I therefore decided that it would be contrary to the public interest to release the information considered exempt, under sections 47C, 47F and 47G(1)(a) of the FOI Act.

26. None of the factors listed in subsection 11B (4) of the FOI Act were taken into account when making my decision.

27. The guidelines indicate that the substantial adverse effect may be indirect and could include where an agency's financial interests in seeking to obtain best value for money through a competitive tendering process may be compromised.

28. Releasing details of the totality of the project budget would enable the market and future tenderers to understand the amount the Commonwealth has committed to spend on the project. In the event that additional work, changes or further tenders are required to be completed, this knowledge could be used by prospective tenderers to compromise the commercial position of the Commonwealth during future negotiations.

### **Further Information**

29. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

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