



DEFENCE FOI 594/20/21 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

“...the following:

1. *Department of Defence's submission document to the AWEI scheme;*
2. *Pride in Diversity's response/feedback to the Department of Defence regarding the submission;*
3. *Correspondence between the Department of Defence and Pride in Diversity regarding DoDs submission;*
4. *Data collated by the Department of Defence for provision to Pride in Diversity and AWEI scheme;*
5. *Results of AWEI employee survey conducted by Department of Defence on Department of Defence employees;*
6. *How many staff members worked on the submission, their roles and the time it took them to complete.*
7. *Payments made by DoD to Pride in Diversity/ACON in respect of this submission.”*

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 five documents as matching the description of the request. I have removed pages 68-164 of document three as these pages of the document have been redacted in-full under s47F [public interest conditional exemptions - personal privacy] of the FOI Act.

4. No documents exist in relation to Items 6 and 7 of this request.

Exclusions

5. 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 final versions of documents.

Decision

6. I have decided to;
- a. deny access to two documents (Items 1 and 2) on the grounds that the material is considered exempt under sections 47E(c) and (d) [public interest conditional exemptions – personnel management, and effective and efficient operations of an agency] and;

- b. partially release three documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] on the grounds that the material is considered exempt under sections 47E(c) and (d) [public interest conditional exemptions – personnel management, and effective and efficient operations of an agency], 47F [public interest conditional exemptions – personal privacy] and 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 provided by subject matter areas within Defence; and
 - f. consultation with third parties.

Reasons for decision

Section 47E(c) and (d) – Certain operations of agencies

8. Section 47E(c) [management and assessment of personnel] conditionally exempts a document if its disclosure under this Act would, or could reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

9. In relation to section 47E(c), the Guidelines explain that, where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemptions in section 47E(c) namely, that:

- a. an effect would reasonably be expected following disclosure*
- b. the expected effect would be both substantial and adverse.*

10. For this exemption to apply, the documents must either relate to:

- a. the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; or*
- b. the assessment of personnel – including the broader personnel management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment or bonus or eligibility for progression.*

11. I found that the documents identified contain information relating to the management of personnel, in particular personnel participating in performance agreements and programs relating to pride and diversity within Defence. These statements could reasonably be expected to prejudice the ability to provide future management or assessment of personnel.

12. Taking into account the above factors, I consider that the release of the information would be an unreasonable disclosure of personnel management information and is conditionally exempt under section 47E(c) of the FOI Act.

13. Section 47E(d) [effective and efficient operations of an agency] conditionally exempts a document if its disclosure under this Act would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

14. In relation to section 47E(d), the Guidelines explain that for this exemption to apply, the predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.

15. I found that the documents identified contain information regarding the intended course of action areas within Defence propose in relation to assisting and managing support for personnel. The disclosure of these statements could reasonably be expected to prejudice Defence's ability to properly conduct its activities.

16. Taking into account the above factors, I consider that the release of the information provided could have a substantial adverse effect on the proper and efficient conduct of the operations and is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F - Personal Privacy

17. Upon examination of the document, I identified information, specifically names, rank and opinions of individuals other than the applicant.

18. 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 document*
- c. the availability of the information from publicly accessible sources*
- d. the effect the release of the personal information could reasonably have on the third party.*

19. I found that the:

- a. specific personal information listed is not well known*
- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents*
- c. information is not readily available from publicly accessible sources.*

20. The release of the names, ranks and opinions of individuals identified in the documents could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F of the FOI Act.

Section 47G – Business

21. Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

22. Upon examination of the documents, I identified information that would, or could reasonably be expected to, have an adverse effect on the third parties who supplied submissions to Defence in relation to Pride in Diversity and the AWEI Scheme.

23. Part of the information within the documents relates to the business affairs and financial matters of organisations other than the applicant which are of a sensitive nature. Disclosure of this information into the public domain would provide potential competitors with information on how pricing and tender documentation is prepared by other organisations.

24. Submissions are provided by businesses to Defence on the assumption that they are held as commercially sensitive. Businesses operate with a high level of technical merit to provide detailed and competitive submissions and they may lose their commercial edge in a competitive market if that information was disclosed.

25. Accordingly, I have decided the information is conditionally exempt under section 47G(1)(a) of the FOI Act.

Public interest considerations – Sections 47C, 47E, 47F and 47G

26. I have found that the identified documents are conditionally exempt under sections 47C, 47E, 47F, and 47G of the FOI Act.

27. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factor is that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource.

28. The disclosure of this information may also increase public participation in the Defence process (section 3(2)(a) of the FOI Act), or increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

29. However, while the information may be of particular interest to the applicant, Defence already publishes a substantial amount of contractual information allowing for public scrutiny of government expenditure and decision making processes. Disclosing the exempt information within the documents in scope of this request would not further inform public debate or increase discussion of Defence activities in any meaningful way.

30. 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 or harm:

- a. the protection of an individual's right to privacy;
- b. the agency's ability to obtain similar quality of tender submissions in the future;
- c. the management function of an agency;
- d. the interests of an individual or group of individuals; and
- e. the proper and efficient conduct of the operations of an agency.

31. Releasing administrative and costing details could be expected to reduce the ability to obtain detailed commercial and financial information from future tender providers. No irrelevant factors, outlined in section 11B(4) of the FOI Act were considered when making my decision.

32. It is for these reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47C, 47E, 47F and 47G of the FOI Act.

Third party consultation

33. I decided to consult with third parties regarding their information contained in the documents. In response to this consultation, some of the third parties have objected to the release of their business/personal information. I have agreed with those contentions.

Mr Haitham Elgohary
Accredited Decision Maker
Associate Secretary Group