



Australian Government
Department of Defence

FOI 440/21/22 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:

“All documents held by the Department of Defence in relation to the selection (and selection process) of the new CEO/Executive Director of the Australian Strategic Policy Institute (ASPI), generated/received between 30 December 2021 and 5 April 2022 inclusive.

“The scope includes correspondence to and from ASPI in relation to the above, and excludes any duplicate documents.”

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 29 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 the FOI reference number and item number to each of the documents which corresponds with the schedule.

Exclusions

6. 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

7. I have decided to:
 - a. release four documents in full;
 - b. partially release 18 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 34 [Cabinet documents], section 47C [public interest conditional exemptions – deliberative processes], section 47E(c) [public interest conditional exemptions – certain operations of agencies] and/or 47F [public interest conditional exemptions – personal privacy] of the FOI Act;
 - c. deny access to seven documents under section 34 [cabinet documents] and/or section 47C [public interest conditional exemption – deliberative processes] of the FOI Act; and
 - d. remove irrelevant material under section 22 of the FOI Act

Material taken into account

8. 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 the Department of the Prime Minister and Cabinet.

Reasons for decision

Section 22

9. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to you with deletions, but have decided against this course of action, as the document would be meaningless and of little or no value once the exempt material is removed.

Section 34 – Cabinet documents

10. On review of the documents, I identified information, specifically relating to the development of material for consideration by the Cabinet.

11. Section 34 of the FOI Act exempts a document if the document has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be submitted and it was brought into existence for the dominant purpose of submission or consideration by the Cabinet, or a draft document to which the proceeding requirements apply.

12. Paragraph 5.59 of the Guidelines states that the Cabinet exemption applies to the following classes of documents:

Cabinet submissions that:

- a. have been submitted to Cabinet;
- b. are proposed for submission to Cabinet;
- c. were proposed to be submitted but were never in fact submitted;
- d. were brought into existence for the dominant purpose of submission for the consideration of Cabinet;
- e. official records of Cabinet; or
- f. documents prepared for the dominant purpose of briefing a minister on a Cabinet submission.

13. I identified documents that were brought into existence for the dominant purpose of submission to Cabinet or proposed by a Minister for submission to Cabinet. On this basis, I consider that this information is exempt under subsections 34(1)(a) and 34(1)(c) of the FOI Act.

14. Further, I identified documents that were brought into existence for the dominant purpose of submission to inform a Cabinet process. I found information in the documents that was provided to Cabinet for deliberation on an established Cabinet process. Release of this

information would reveal Cabinet deliberations that have not been officially disclosed. On this basis, I consider that this information is exempt under subsection 34(3) of the FOI Act.

15. Paragraph 5.57 of the Guidelines relating to section 34 of the FOI Act state that Agencies should refer to the Cabinet Handbook issued by the Department of the Prime Minister and Cabinet (PM&C) for guidance about Cabinet processes and the underlying principles of the Cabinet system. The Handbook states that agencies must consult with PM&C on any Cabinet-related material identified as being within the scope of an FOI request. Consequently, I consulted with PM&C on the relevant documents.

Section 47C – Deliberative processes

16. Section 47C of the FOI Act provides that:

‘a document is conditionally exempt if its disclosure would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, or a Minister, or the Government of the Commonwealth.’.

17. I have taken into account the paragraphs 6.52 through 6.88 of the Guidelines noting that one consideration under section 47C is whether the documents include deliberative matter. Upon examination of the documents I identified information which, if released, would disclose opinions and advice that have been prepared or obtained for purposes of the deliberative process involved in the functions of an agency.

18. The documents contain advice, opinions and recommendations prepared for the purposes of informing policy decisions. I am satisfied that this deliberative matter relates to a process that was undertaken within government to consider whether and how to make or implement a decision, revise or prepare a policy, administer or review a program, or some similar activity.

19. Subsection 47C(2) provides that “deliberative matter” does not include purely factual material. I have had regard to the fact that “purely factual material” does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it. A factual summary prepared to aid a complex issue may be classed as purely factual material, but may also be of a character as to disclose a process of section involving opinion, advice or recommendation. As such, a conclusion which involves a deliberative process may well prevent material from being purely factual.

20. Taking the above into consideration, I am satisfied that the information contained in these documents is conditionally exempt under section 47C of the FOI Act.

21. Subsection 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. My public interest considerations are set out below.

Section 47E – Certain operations of agencies

22. Subsection 47E(c) of the FOI Act states that:

a document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to,

c. have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

23. Paragraphs 6.113 and 6.114 of the Guidelines provide 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 subsection 47E(c), namely, that:

*...an effect would reasonably be expected following disclosure;
the expected effect would be both substantial and adverse.*

24. Further, for this exemption to apply, the documents must relate to:

...the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety...

25. I consider that the management of staff and discharge of the Australian Government's legal responsibility to ensure the health and safety of its workforce may be substantially and adversely affected if the public servants' names and contact details in these documents are disclosed in response to this FOI request.

26. I have reviewed the documents and consider that due to the subject matter contained in the documents, I consider that release of Departmental staff names, in this instance, could see those individuals targeted for abuse as their roles in Defence are not known and could attract attention through publication.

27. Subsection 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. My public interest considerations are set out below.

Section 47F – Personal privacy

28. On review of the documents, I identified information, specifically names and personal details of third parties other than the applicant. I found the material to be conditionally exempt under section 47F of the FOI Act.

29. When assessing whether the disclosure of this 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; and
- d. any other matters that the agency or Minister considers relevant.

30. Against the above criteria I found:

- a. that the specific personal information is not well known;
- b. the individuals whose personal information is contained in the document is not known to be associated with the matters dealt with in the documents; and
- c. the information is not readily available from publicly accessible sources.

31. Taking into account the above factors, I consider the release of the material would be an unreasonable disclosure of personal information of individuals other than the applicant and could reasonably be expected to cause harm to their privacy. I have therefore decided that this information is conditionally exempt under section 47F of the FOI Act.

32. Subsection 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. My public interest considerations are set out below.

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

33. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. The term ‘public interest’ is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered.

34. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of relevant factors set out in subsection 11B(3) of the FOI Act, which favours access to a document to:

- 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.

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

- h. an agency’s ability to obtain confidential information;
- i. an agency’s ability to obtain similar information in the future; and
- k. the interests of an individual or group of individuals.

36. While I consider that release of the material removed under sections 47C, 47E(c) and 47F may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. Furthermore, the public interest is better served in protecting the privacy of the individuals whose personal details are contained within these documents from release to the public at large.

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

38. After weighing all of the above, I consider, that on balance, the public interest factors against disclosure outweigh the factors for disclosure. I have therefore decided that it would be contrary to the public interest to release the information considered exempt under sections 47C, 47E(c) and 47F of the FOI Act.

Further information

39. A number of the documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.

40. 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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