



## **DEFENCE FOI 501/21/22 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 correspondence in the period 6 April 2022 to 14 May 2022 inclusive related to the application/interpretation of caretaker conventions. The scope is limited to correspondence from and to Defence and either of the following:*

*1. The Department of the Prime Minister and Cabinet*

*Or*

*2. The Minister for Defence (or his office)”*

### **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 two documents as matching the scope of this 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 final versions of documents.

### **Decision**

5. I have decided to partially release two 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 47E [public interest conditional exemptions – certain operations of agencies] of the FOI Act.

### **Material taken into account**

6. 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. consultation undertaken with the Department of the Prime Minister and Cabinet (PM&C).

## **Reasons for decision**

### **Section 47E – Certain operations of agencies**

7. Section 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;”*

8. 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 section 47E(c), namely, that:

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

9. 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...*

10. The material removed contains names and contact details of PM&C personnel. I considered PM&C advice that details of non-Senior Executive Service (SES) departmental staff are not released as part of a usually applied policy by that agency.
11. 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.
12. I have reviewed the documents and consider that due to the subject matter contained in the documents, I consider that release of the identified material, in this instance, could see those individuals targeted for abuse as their roles in PM&C are not known and could attract attention through publication.

## Sections 47E – Public interest consideration

13. Subsection 11A(5) of the FOI Act requires an agency 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.
14. 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 section 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.
15. 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:
  - a. an agency's ability to obtain confidential information;
  - b. an agency's ability to obtain similar information in the future; and
  - c. the interests of an individual or group of individuals.
16. While I consider that release of the material removed under section 47E(c) 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.
17. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.
18. 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 section 47E(c) of the FOI Act.

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