



DEFENCE FOI 119/22/23 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:

“Can you please provided a copy of the PGPAS23 Approval variation form for the below procurement variations A1, A2 ,A3,A4,A5,A6,A7

Department of Defence CN3642373 \$2,744,797.00 Defence Establishment Berrimah Married Quarters and A031 Demolition, NT

Department of Defence CN3642373-A1 \$6,582,022.56 Building Construction and Support Services

Department of Defence CN3642373-A2 \$6,857,519.76 Building Construction and Support Services

Department of Defence CN3642373-A3 \$11,125,903.66 Building Construction and Support Services

Department of Defence CN3642373-A4 \$11,309,053.66 Building Construction and Support Services

Department of Defence CN3642373-A5 \$12,101,747.68 Building Construction and Support Services

Department of Defence CN3642373-A6 \$22,168,947.68 Building Construction and Support Services

Department of Defence CN3642373-A7 \$25,260,216.38 Building Construction and Support Services.”

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 5 documents as matching the description of the request.

Decision

4. I have decided to:

- a. partially release five documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] under sections 47E(d)[public interest conditional exemptions – certain operations of agencies] and 47G [public interest conditional exemptions – business] of the FOI Act; and
- b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

5. 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; and
- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Section 47E(d) – Public interest conditional exemptions – certain operations of agencies

6. Section 47E(d) of the FOI Act states:

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 the agency.

7. The Guidelines, at paragraph 6.123, provide that:

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.

8. Upon examination of the documents, I found information that relates specifically to names and direct phone numbers of staff which are not publicly available. If this information was to be made public, it could reasonably impact the ability of the individual to undertake their role and have an adverse effect on the proper and efficient conduct of the operations of the Department.

9. Accordingly, I am satisfied that the information is exempt under section 47E(d) of the FOI Act.

10. 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. My public interest considerations are set out below.

Section 47G – Business

11. 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..."

12. 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.

13. The Guidelines explain at paragraph 6.188:

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.

14. 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.

15. 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'.

16. The release of the information would release commercial and contractual information of a business that could unreasonably affect their business affairs in the following adverse ways:

- i. it would adversely impact the organisations commercial affairs and information about commercial business agreements with a client; which in turn will directly impact the organisation's 'money making affairs';

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

18. 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. My public interest considerations are set out below.

Public interest considerations – Sections 47E(d) and 47G

19. I have found that some of the identified documents are conditionally exempt under sections 47E(d) and 47G of the FOI Act. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed 'unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest'.

20. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and it would allow the applicant access to their own personal information.

21. However, disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

22. 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. the protection of an individual's right to privacy
- b. the interests of an individual or a group of individuals
- c. an agency's ability to obtain confidential information
- d. an agency's ability to obtain similar information in the future

- e. the management function of an agency
- f. the personnel management function of an agency.

23. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47E(d) and 47G of the FOI Act.

24. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

Further Information

25. For variations 5-7, the delegation is exercised through MyFi and there is no means to capture the proof of signature as a document, a snapshot has been provided as evidence to the approval within the MyFi system.

Nat MCLEAN

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Natalie McLean
Accredited Decision Maker
Security and Estate Group