



## **DEFENCE FOI 517/21/22 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:

*“.... the department’s review of Landbridge’s 99-year lease of the Darwin Port. Additionally, I seek any correspondence about the review’s findings and/or recommendations to ministers.  
I limit the time period to between January 1, 2021 and May 25, 2022.”*

### **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 13 documents as matching the scope 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 final versions of documents.

### **Decision**

5. I have decided to:
- release two documents in full;
  - release one document in part 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;
  - deny access to 10 documents under section 34 [Cabinet documents] of the FOI Act; and
  - remove irrelevant material under section 22 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 documents in issue;
  - relevant provisions in the FOI Act;
  - the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and

- e. consultation with the Department of the Prime Minister and Cabinet (PM&C).

## **Reasons for decision**

### **Section 22**

7. 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**

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

9. 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.

10. Paragraph 5.59 of the Guidelines state that the Cabinet exemption applies to the following classes of documents:

(a) *Cabinet submissions that:*

- i. *have been submitted to Cabinet; or*
- ii. *are proposed for submission to Cabinet; or*
- iii. *were proposed to be submitted but were never in fact submitted and were brought into existence for the dominant purpose of submission for the consideration of Cabinet;*

(b) *official records of Cabinet; or*

(c) *documents prepared for the dominant purpose of briefing a minister on a Cabinet submission.*

11. The documents in the scope of this request are exempt as have been submitted to Cabinet, or were brought into existence for the dominant purpose of submission for the consideration of Cabinet. The documents, if disclosed, would reveal Cabinet decision. PM&C were consulted on the documents and support the use of section 34 of the FOI Act.

12. Based on the above reasoning, I consider the documents exempt under section 34 of the FOI Act.

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

13. 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;”*

14. 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.*

15. 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...*

16. 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.

17. 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.

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.

### **Sections 47E – Public interest considerations**

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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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