



DEFENCE FOI 079/22/23 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

“...all documents relating to AusTender contract No. CN3663185 “Public relation services”. Including internal correspondence and/or briefs approving the tender.”

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 14 documents (40 pages) 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 an FOI reference number and document 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 partially release 14 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], 47F [public interest conditional exemptions - personal privacy] and section 47G [public interest conditional exemptions - business] 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. responses from third party consultation.

Reasons for decision

Section 47E - Public interest conditional exemptions – certain operations of agencies

9. Upon examination of the material, I identified documents containing information relating to Defence personnel contact details and identification and financial management codes.

10. Section 47E 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 an agency.

11. The Guidelines explain the term ‘substantial adverse effect’ to broadly mean:

5.20 ... an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person. The word ‘substantial’, taken in the context of substantial loss or damage, has been interpreted as ‘loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal.’

12. The Guidelines further explain:

6.101 For the grounds in [section 47E(d)] to apply, the predicted effect needs to be reasonably expected to occur. ... There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

6.103 An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the decision maker’s statement of reasons, if they can be included without disclosing exempt material.

13. Departmental staff names as well as their direct contact details in the form of email addresses and phone numbers, have not been released. Defence has dedicated avenues of communication for interfacing with the public. It is submitted that the release of this specified information which is not publicly available, would divert customers through incorrect/inappropriate channels and could substantially reduce the efficiency of Defence’s ‘proper and efficient’ arrangements for responding to correspondence. As such, I submit that the release of this information could substantially and adversely affect Defence’s operations.

14. The document identification codes and financial management codes have also been exempt from disclosure. In assessing whether disclosure could be expected to adversely affect the operations of Defence, I consider that these numbers are pathways to information and funds. There exists the potential for this information flow to be analysed so that its functionality and behaviour can be understood. These techniques could then be applied to gain access to other sources of information within the Department.

15. For the reasons above, I consider that the release of this information would have a substantial adverse effect on the proper and efficient conduct of the operations of Defence and is therefore exempt under section 47E(d) of the FOI Act.

16. 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 further below.

Section 47F – Public interest conditional exemptions - personal privacy

17. Section 47F of the FOI Act states that:

- (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (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) *any other matters that the agency or Minister considers relevant.*

18. Upon examination of the documents, I identified that certain material contains personal information of individuals other than the applicant.

19. The Guidelines state at paragraph 6.140, 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 within the documents; and
- c. the availability of the information from publicly accessible sources.

20. Against the criteria, I found:

- a. the author of the document is identifiable;
- b. the specific personal information listed is not well known;
- c. the information is not readily available from publicly accessible sources; and
- d. no public purpose would be achieved through release.

21. I have identified information regarding staff members in relation to the company involved in the tender process which is not publicly available. Disclosure of this information, would, or could have a substantial adverse effect on the future supply of information to Defence. The release of individual's personal contact details identified in the documents could also reasonably be expected to cause harm to their privacy.

22. Taking into account the above factors, I consider that the release of personal information other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F of the FOI Act. My public interest considerations are set out further below.

Section 47G - Public interest conditional exemptions – business

23. Upon examination of the documents, I identified business information belonging to a number of service providers to Defence.

24. Section 47G of the FOI Act states:

- (1) *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; or*
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

25. Upon examination of the documents, I identified pricing information which could, by way of example, assist the third party's competitors or diminish the third party's competitive position in providing these service offerings.

26. As such, I am satisfied that the information contained in these documents is conditionally exempt under section 47G of the FOI Act. My public interest considerations are detailed below.

Sections 47E, 47F and 47G - Public interest considerations

27. Section 11A(5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed '*unless (in the circumstances) access to the document at the time would, on balance, be contrary to the public interest*'.

28. In assessing whether disclosure is on balance, contrary to the public interest, I considered the Guidelines together with a range of 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.*

29. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

30. While I consider that release of the material removed under sections 47E, 47F and 47G of the FOI Act may be of some interest to the applicant, I consider the public interest is better served in protecting the specific material from disclosure. 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 individuals whose personal details are contained within these documents from release to the public at large.

31. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors that I find particularly relevant to this request are that the 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 information in the future;*
- c. the interests of an individual or group of individuals; and*
- d. the management function of an agency.*

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

33. In coming to the above decision, I considered factors outlined in section 11B(4) [irrelevant factors] of the FOI Act. None of these factors were taken into account in making my decision.

Further Information

34. 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.

Wendy

Digitally signed by
Wendy [REDACTED]
Date: 2022.10.06
16:21:59 +11'00'

Wendy [REDACTED]
Accredited Decision Maker
Defence People Group