



DEFENCE FOI 571/21/22 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 following documents of the Woomera Prohibited Area (WPA) Advisory Board.

For the board meetings held on 14 April 2021 and 15 November 2021:

- The agenda and business papers circulated in advance of those meetings*
- Any papers tabled at those meetings*

For the board meeting that was scheduled to take place in April/May 2022:

- The agenda and business papers circulated in advance of the meeting*
- Any papers tabled at the meeting*
- The minutes of the meeting”*

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 48 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 an FOI reference number and Item/Serial 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 41 documents in full; and
 - b. partially release 7 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 33 [documents affecting national security, defence or international relations], section 47 [documents disclosing trade secrets or commercially valuable information], section 47D [public interest conditional exemptions – financial or property

interests of the Commonwealth] and section 47F [public interest conditional exemptions-personal privacy] 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 third parties including members of the Woomera Prohibited Advisory Board (the Board) and invited attendees at the meetings.

Reasons for decision

Section 33 – Documents affecting national security, defence or international relations

9. Section 33(a) of the FOI Act states:

“A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

(i) the security of the Commonwealth

(ii) the defence of the Commonwealth; ...”

10. In regards to the terms 'would or could reasonably be expected to' and 'damage', the Guidelines provide:

Would or could reasonably be expected to

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

Security of the Commonwealth: [Damages]

5.31 The meaning of ‘damage’ has three aspects:

- i. that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*

ii. *the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*

iii. *The organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

Defence of the Commonwealth: [Damages]

5.35 Damage to the defence of the Commonwealth is not necessarily confined to monetary damage ... However, in all cases, there must be evidence that the release of the information in question will be likely to cause the damage claimed.

11. Additionally, the Guidelines state:

Security of the Commonwealth

5.29 The term 'security of the Commonwealth' broadly refers to:

- (a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests*
- (b) the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations.*

Defence of the Commonwealth

5.34 The FOI Act does not define 'defence of the Commonwealth'. Previous Administrative Appeals Tribunal (AAT) decisions indicate that the term includes:

- *meeting Australia's international obligations*
- *ensuring the proper conduct of international defence relations*
- *detering and preventing foreign incursions into Australian territory*
- *protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

12. I identified material in the documents which upon release could reasonably be expected to cause damage to the security of the Commonwealth by making public a Defence capability that is highly classified.

13. Furthermore, I find that disclosure of the documents would or could reasonably be expected to cause damage to the defence of the Commonwealth. The information in the documents specify details about military equipment which are extremely sensitive in nature. Disclosure of the information would undermine the effectiveness of current and future military capabilities in a threat environment,

14. Based on the above considerations, I find the specified material to be exempt under sections 33(a)(i) and 33(a)(ii) of the FOI Act.

Section 47 – Documents disclosing trade secrets or commercially valuable information

15. Section 47(1)(b) of the FOI Act states:

(1) A document is an exempt document if its disclosure under this Act would disclose:

... (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

16. The Guidelines at paragraph 5.204 state that:

Information having a commercial value

5.204 To be exempt under s47(1)(b) a document must satisfy two criteria:

- the document must contain information that has a commercial value either to an agency or to another person or body, and*
- the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.*

5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. ... The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value*
- whether the information confers a competitive advantage on the agency or person to whom it relates ...*
- whether a genuine 'arm's-length' buyer would be prepared to pay to obtain that information*
- whether the information is still current ...*
- whether disclosing the information would reduce the value of a business operation or commercial activity ...*

...5.207 The second requirement of s47(1)(b) ... must be established separately by satisfactory evidence. ... It must be established that the disclosure would destroy or diminish the commercial value of the information.

17. Upon examination of the documents, I identified information that has a commercial value which would be, or could reasonably be expected to be, diminished if it were disclosed. In mining, exploration is the foundation of all value creation.

18. Accordingly, I consider details about Exploration Licenses in the 'Quarterly Resources Tenement Activity Reports' exempt under section 47(1)(b) of the FOI Act.

Section 47D – Public interest conditional exemptions – financial or property interests of the Commonwealth

19. Section 47D of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

20. Paragraph 6.90 of the Guidelines states:

Financial or property interests

6.90 *The financial or property interests of the Commonwealth or an agency may relate to assets, expenditure or revenue-generating activities. An agency's property interests may be broader than merely buildings and land, and include intellectual property or the Crown's interest in natural resources.*

21. In regards to the term 'substantial adverse effect', of the Guidelines provides:

5.20 *The term 'substantial adverse effect' broadly means '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'.*

22. Upon examination of the documents, I identified conditionally exempt commercially sensitive information, the disclosure of which would place the commonwealth at a commercial disadvantage though disclosure of proposed financial and property strategies. I consider that disclosure of this information could reasonably be expected to adversely affect such negotiations and prejudice the frank and open future supply of information to the Commonwealth.

23. Taking the above into consideration, I am satisfied that the relevant information is conditionally exempt under section 47D of the FOI Act. My public interest considerations are detailed below.

Section 47F – Public interest conditional exemptions - personal privacy

24. Section 47F of the FOI Act states:

General rule

- (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.*

25. Upon examination of the documents, I identified information, specifically names and contact details that are not publically available.

26. Paragraph 6.140 of the Guidelines states that an agency must have regard to certain matters in determining whether disclosure of the document would involve an unreasonable disclosure of personal information. Expanding on that, paragraph 6.142 of the Guidelines lists key factors for determining whether disclosure is unreasonable.

27. Taking the above into consideration, I found that the specific personal information is 'not well known' (s47F(2)(a) of the FOI Act) nor is it 'readily available from publicly accessible sources' (s47F(2)(c) of the FOI Act). Further, I consider that the 'documents

contain third party personal information’ (paragraph 6.142(b) of the Guidelines) and the *‘release of the documents would cause stress on the third party’* (paragraph 6.142(c) of the Guidelines). I also consider that *‘no public purpose would be achieved’* through releasing that information (paragraph 6.142(d) of the Guidelines) or the personal details of individuals which are not the applicant.

28. Accordingly, in the interests of upholding the personal privacy considerations of the FOI Act, specific personal information have not been disclosed and exempt under section 47F of the FOI Act.

Public interest considerations – sections 47D and 47F

29. I have found that the identified documents are conditionally exempt under sections 47D and 47F of the FOI Act. 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 that time would, on balance, be contrary to the public interest.*

30. In determining whether to release the document, I considered the Guidelines, together with a range of factors that favour access to a document set out in section 11B(3)[public interest exemptions-factors favouring access] of the FOI Act. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to public interest. Specifically I considered if disclosure of the documents would:

- a. promote the objects of the FOI Act;
- b. inform debate on a matter of public importance; or
- c. promote effective oversight of public expenditure

31. Disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, there is a strong public interest in not releasing information that could unreasonably affect a business.

32. I found that disclosure of this information would not increase public participation in the Defence processes (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).

33. 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 is that the release of this information could reasonably be expected to:

- a. prejudice the competitive commercial activities of an agency;
- b. harm the interests of an individual or group of individuals;
- c. prejudice the management function of an agency
- d. the protection of an individual’s right to privacy; and
- e. the interests of an individual or group of individuals.

34. On balance, I consider the benefit to the public from disclosure is outweighed by the benefit to the public from withholding the information. I have found that at this time, release of the information identified would inhibit the proper administration of public monies by impeding the proper completion of ongoing negotiations.

35. While I consider that release of the material removed under sections 47D and 47F of the FOI Act may be of some interest to the applicant, its disclosure would not inform public debate on any matter of public importance in any meaningful way. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

36. In my view, it would be contrary to the public interest to disclose personal information of third parties and cause unnecessary distress to them. Furthermore, the public interest is better served in protecting the privacy of individual's personal details contained within the documents from release to the public at large.

37. None of the factors listed in section 11B(4) [Irrelevant Factors] 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 47D and 47F of the FOI Act.

Third party consultation

39. I decided to consult with third parties regarding their information which was contained in the documents. No objections were raised about the release of the redacted documents.



Lyn Harvey
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