



## **FOI 128/22/23 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):

*"I request access to the following documents:*

*(a) Records relating to internal approval for international travel by APS employees at the EL1, EL2, and acting in those roles employed within CASG Commercial Division for travel undertaken 01 April 2022 to 30 June 2022.*

*(b) Records detailing all costs incurred by the Department (including contractors and services providers) in respect of the international travel per (a) above, including flights and accommodation.*

*(c) Records created for the purpose of demonstrating that the purpose of the travel described at (a) above was achieved.*

*(d) Records that otherwise relate to the travel described at (a) meeting (or not meeting) the requirements of the PGPA Act, the Department's internal travel rules, and the Departments internal financial rules.*

*The following are expressly excluded from this request:*

*(d) Records that are draft documents.*

*(e) Records to the extent that they contain personal information (per the Privacy Act 1988)*

*(f) Records to the extent that they contain commercial-in-confidence information.*

*Request/inquiry timeframe: from date*

*01/04/2022 - 12:00am*

*Request/inquiry timeframe: to date*

*30/06/2022 - 12:00am"*

### **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 nine documents as matching the scope of this 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/Document number to each of the documents which correspond 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 to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

## Decision

7. I have decided to:
- release two documents in full;
  - partially release five 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(d) [public interest conditional exemptions – certain operations of agencies] of the FOI Act;
  - deny access to two documents under section 47G [public interest conditional exemptions – business] of the FOI Act
  - remove irrelevant material under section 22 of the FOI Act.

## Material taken into account

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

## Reasons for decision

### Section 22 – Edited copies with exempt or irrelevant matter deleted

9. Section 22 of the FOI Act provides that if an agency or Minister decides:
- to refuse access to an exempt document; or*
  - that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access*

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

10. The documents provided contain personal information (names, email addresses, position numbers, PMKeyS numbers, telephone numbers, mobile telephone numbers, signatures) that do not relate to the scope of the request. I consider this information as outside the scope of this request.

11. Considering all of the above, I decided that it was reasonably practicable to remove the material that did not fall within scope of this request and release the documents in that form.

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

12. 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.*

13. 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.*

14. The documents contain information on Defence's assessment of a project and costs associated with that project. I consider the release of this information would or could substantially adversely affect the proper and efficient conduct of Defence by:

- impacting the Department's ongoing working relationship with the third party
- reduce the flow of information between the Department and the third party

- c. potentially delay completion of the project as new further mitigation strategies may need to be developed and implemented

15. The Guidelines advise me to consider whether the information could be reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. I do not consider that releasing the information could reasonably be expected to improve Defence's assessment of a project.

16. Taking into account the above factors, I consider that the release of the information is conditionally exempt under section 47E(d) of the FOI Act.

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

### **Section 47G – Business**

18. 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...”*

19. 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.

20. 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.*

21. 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.*

22. 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’.*

23. The release of the information would disclose 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’;

24. 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.

25. 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**

26. 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’.

27. 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.

28. 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).

29. 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.

30. 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.

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

#### **Further Information**

32. 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.

**matt.seaman**

Digitally signed by matt.seaman

Date: 2022.11.03 09:47:56

+11'00'

Mr Matthew Seaman

Accredited Decision Maker

Defence People Group