



## DEFENCE FOI 199/22/23 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:

*I kindly request the release of a report commissioned by the Department of Defence in early 2022 and submitted by heritage architect firm, Lovell Chen, of Melbourne, regarding options for adaptive reuse of the Defence property at 310 St Kilda Rd, Melbourne.*

....

*Included in the report should also be the statement of work provided to MMP Projects who are currently undertaking works within 310 St Kilda Rd, Southbank.*

### 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 three (3) documents as matching the description 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.

### Decision

5. I have decided to:
- partially release three (3) 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 sections 47E(d) [public interest conditional exemptions – certain operations of agencies], 47F [public interest conditional exemptions - personal privacy] and 47G [public interest conditional exemptions – business] 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
  - advice received as part of a third party business consultation process.

## Reasons for decision

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

7. 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 an agency.*

8. In relation to subsection 47E(d) of the FOI Act, paragraph 6.123 of the Guidelines states:

*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...*

9. Upon examination of the documents, I identified information of individuals' details including their name and contact information. I considered that the material could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Defence

10. The names of individuals, as well as direct contact information in the document, have not been released. It is submitted that the release of this specified information, which is not publicly available, would create an opportunity for third parties to ascertain commercially valuable information through an improper communication channel. Defence has dedicated avenues of communication for interacting with the public which are best supported for contact in these instances.

11. In addition, the release of this information could reasonably be expected to affect the ability of the individual to undertake their role. The release of names could see individuals targeted as their roles in Defence are not widely known and could attract attention through publication.

12. In conclusion, I am satisfied that parts of the document are conditionally exempt under section 47E(d) of the FOI Act.

### Section 47F – Public interest conditional exemptions - personal privacy

13. Section 47F of the Act states:

*(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.*

14. Upon examination of the documents, I identified information, specifically the names of individuals other than the applicant.

15. At 6.140 the Guidelines state an agency must have regard to certain matters in determining whether disclosure of the document would involve an unreasonable disclosure of personal information. I found that the:

- a. specific personal information listed is not well known;
- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents; and
- c. information is not readily available from publicly accessible sources.

16. The release of the names identified in the documents could reasonably be expected to cause harm to their privacy.

17. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information.

18. Accordingly, I am satisfied that the information is exempt under section 47F(1) of the FOI Act.

#### **Section 47G - Public interest conditional exemptions – business**

19. Upon examination of the documents, I identified business information belonging to a service provider to Defence.

20. 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.*

21. I identified pricing information, contained in a document, 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.

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

#### **Public interest considerations - Sections 47E(d), 47F and 47G**

23. 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'.

24. 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.*

25. 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.

26. 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.

27. 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.*

28. 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(d), 47F and 47G of the FOI Act.

29. 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.

### **Third party consultation**

30. I decided to consult with third parties regarding their information which was contained in the documents. In response to this consultation, some of the third parties have objected to the release of their business information.



Ricky  
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