



DEFENCE FOI 062/22/23 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 as follows:

“I request please all documents relating to AusTender contract No. CN3699978 ‘Advice for Strategic Narrative Development’. I further request all correspondence relating to its listing and subsequent delisting on the AusTender website.”

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 17 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 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 17 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(a), 47E(d) [public interest conditional exemptions- operations of an agency] 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 documents, I identified documents containing information relating to Defence personnel, including names, contact numbers and email addresses.

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:

(a) prejudice the effectiveness of procedure or methods for the conduct of tests, examinations or audits by an agency;

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

11. The Guidelines outline that regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. In relation to subsection 47E(a) of the FOI Act, paragraph 6.104 of the Guidelines states:

Prejudice the effectiveness of testing, examining or auditing methods

6.104 Where the document relates to a procedure or method for the conduct of tests, examinations or audits by an agency, the decision maker must address both elements of the conditional exemption in s47E(a), namely that:

- *an effect would reasonably be expected following disclosure*
- *the expected effect would be, overall, prejudicial to the effectiveness of the procedure or method of the audit, test or examination being conducted.*

12. Releasing the specified information potentially identifies the procedures and methods on how Defence conducts tender processes as well as evaluates and/or rates each application. Releasing the scores and opinions of a tender team which are formed from confidential information provided by third parties for the sole purpose of being used in a tender evaluation process could affect current and future tender processes. The release of this confidential information could affect the way Defence conducts an examination of an application and thus prejudice the information attained.

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

Substantial adverse effect on an agency's proper and efficient conduct of operations

...

6.123 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. Releasing information that potentially identifies individuals involved in a Defence tender process, details about how the tender was decided and who conducted the tender process could reasonably be expected to have a substantial adverse effect on Defence's management of tender processes. Maintaining the integrity of the process is paramount. Releasing details about members involved in a tender process could affect current and future tender processes if it ever came to be believed that Defence lacked integrity with respect to protecting the confidentiality of the process as well as potential third parties and their confidential business information which in turn affects the proper and efficient conduct of the operations of Defence.

15. Additionally, the names of departmental staff 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. Accordingly, I submit that the release of this information could substantially and adversely affect Defence's operations.

16. In conclusion, I am satisfied that parts of the documents are conditionally exempt under sections 47E(a) and 47E(d) of the FOI Act.

17. 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 47G - Public interest conditional exemptions – business

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

19. 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.*

20. Upon examination of the documents, I have identified information relating to staff members in relation to the companies that submitted a tender application which are not publicly available. Disclosure of this information, would, or could have a substantial adverse effect on the future supply of information to Defence.

21. 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.

Public interest considerations - sections 47E and 47G

22. I have found that the identified material conditionally exempt under sections 47E and 47G of the FOI Act.

23. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of relevant factors that favour access to a document set out in section 11B(3) [Public interest exemptions – factors] of the FOI Act. While disclosure may promote some of the objects of the FOI Act, I do not consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities.

24. In coming to my decision, I have had regard to the Guidelines, specifically paragraph 6.22 in relation to public interest factors against disclosure and found that the identified material, if released:

- a. could reasonably be expected to prejudice the protection of an individual's right to privacy;
- b. could reasonably be expected to prejudice an agency's ability to obtain confidential information;
- c. could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
- d. could reasonably be expected to prejudice the management function of an agency.

25. While I note that the release of this material would be of some interest to the applicant, it would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

26. Noting the above, I have decided that the disclosure of the specified information would be an unreasonable disclosure of business information belonging to others and have an adverse effect on agency operations. Accordingly, I consider the material to be conditionally exempt under sections 47E and 47G of the FOI Act.

Third Party consultation

27. I decided to consult with 5 third parties regarding their information, which was contained in the documents. In response to this consultation, two third parties objected to the release of their business information. I agree with the objections.

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Paul [redacted]
Accredited Decision Maker
Joint Health Command