



DEFENCE FOI 308/22/23 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) for access to:

“... all information, documentation, policy and or procedure documents relating to the IJPAU Hall of Fame be released under the FOI Act”

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 27 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 telephone and fax 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 three documents in full;
 - b. partially release 20 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; and
 - c. deny access to four documents in full on the grounds that the document is considered exempt under 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; and
- d. 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 – access to edited copies with exempt or irrelevant matter deleted

9. Section 22(1) of the FOI Act requires that where a decision maker 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, they must consider releasing the document with exempt and irrelevant matter deleted, where possible. I have adopted that approach.

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

10. 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.

11. 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.

12. In the case of *ABK v Commonwealth Ombudsman* [2022] AICmr 44, the Information Commissioner (IC) found that where the direct email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under s47E(d). The IC made this determination due to reasonable expectation that the release of staffs' direct contact details would undermine the operation of established channels of communication with the public. Further, the IC accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.

13. I am satisfied that were the names, direct contact details or specific position titles that identify Defence personnel made publicly available, it would have substantial adverse effects on the proper and efficient operation of extant public communication channels. Further, I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of Defence personnel. Disclosure of names, email addresses and phone numbers could therefore reasonably be expected to prejudice the operations of Defence.

14. The Guidelines provide, at paragraph 6.120, that I should consider whether disclosure of the information 'could reasonably be expected to lead a change in the agency's processes that would enable those processes to be more efficient.' Given that the direct contact details within the document/s are not publicly available and that more appropriate communication channels

are already available, I am satisfied that release of the information could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.

15. Accordingly, I am satisfied that all names, direct staff email addresses, phone numbers or identifying position titles contained within the documents are exempt under section 47E(d) of the Freedom of Information Act 1982 (Cth).

Section 47F – Public interest conditional exemptions - Personal privacy

16. Section 47F of the FOI 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.*

17. Upon examination of the documents, I identified information about individuals other than the applicant.

18. 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.

19. The release of these individuals' names could reasonably be expected to cause harm to their privacy.

20. Based on the above factors, I consider that the release of the personal information of individuals that are named in the documents would be an unreasonable disclosure of their personal information.

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

Section 47G – Public interest conditional exemptions - Business

22. 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...

23. 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. 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.

24. The Guidelines also state at paragraph 6.184:

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.

25. The Guidelines, at paragraph 6.192, 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’.

26. I note that this provision requires consideration of the reasonable expectation, rather than certainty, to be applied in deciding whether disclosure would cause the consequences specified. The application of this exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that disclosing contractual information of third parties could adversely affect the business affairs and profitability of the third parties. The release of the information would release performance and contractual information of businesses that could unreasonably affect their business affairs in the following adverse ways:

- a. 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’; and
- b. provide a competitive advantage to competitors who would use the information to capture the market which would impact the organisations ‘money making affairs’.

27. As such, I am satisfied that this information contained in these documents is conditionally exempt under section 47G of the FOI Act.

Section 47E(d), 47F and 47G – Public interest considerations

28. Section 11A(5) of the FOI Act states:

(5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

29. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being:

- (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.*

30. 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).

31. 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;

32. The interests of an individual or a group of individuals;

33. It is in the public interest that Defence efficiently and productively operate, with regard for the health and wellbeing of its personnel. As discussed above, the release of the family names, email addresses and phone numbers of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate interactions with the public. The direct contact details of Defence personnel should therefore not be disclosed, as the public interest against their disclosure outweighs public interest in their release.

34. There is also a strong public interest in not releasing information that would unreasonably affect a business. Given Defence's strong links with industry, it is imperative that Defence be able to collect and retain sensitive commercial information without fear that the material would be released without authorisation and adversely affect these relationships.

35. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

36. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure and the information exempt under section 47E(d) and 47F of the FOI Act.

37. Factors deemed to be irrelevant in section 11B(5) of the FOI Act were not considered in making my decision.

Further Information

38. 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

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Ann [REDACTED]

Accredited Decision Maker
Defence People Group

