



## DEFENCE FOI 299/22/23 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:

*“.....a copy of recent direction by CASG (Depsec) with regards to enhancing contractor support to CASG. Specifically I am seeking information as to: direction provided to use the Major Service provider arrangements instead of the DSS panel arrangements; the nature of work to be conducted (time and materials or deliverables; under what conditions a DSS panellist can be offered work and any advice provided in order to inform any such direction from each of the Division heads.”*

### 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 one document as matching the description of the request.
4. I have added an FOI reference number to the document.

### Exclusions

5. 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

6. I have decided to:
  - a. partially release one document 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 47D [public interest conditional exemptions-financial or property interests of the Commonwealth] of the FOI Act; and
  - b. remove irrelevant material under section 22 of the FOI Act.

### Material taken into account

7. 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 from officers within the department from Capability Acquisition and Sustainment Group, Commercial Division.

### **Reasons for decision**

#### **Section 47D - Financial or property interests of the Commonwealth**

8. Where access has been denied to information under section 47(D) of the FOI Act, I considered that the material could reasonably be expected to have a substantial adverse effect on the financial interests of Defence.

9. 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.*

10. Paragraph 6.90 of the Guidelines states that:

*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.*

11. In relation to the term 'substantial adverse effect', the Guidelines provides at paragraph 5.20:

*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'.*

12. The Guidelines further provide at paragraph 6.92 that:

*6.92 A substantial adverse effect may be indirect. For example, where disclosure of documents would provide the criteria by which an agency is to assess tenders, the agency's financial interest in seeking to obtain best value for money through a competitive tendering process may be compromised.*

13. Upon examination of the documents, I identified sensitive information describing elements of Capability Acquisition and Sustainment Group's required commercial strategy which are not readily known. If disclosed, this would have a significant negative impact on Defence's ability to obtain best value for money when seeking two or fewer quotations from contractors under Defence panel or standing offer arrangements.

14. I am therefore satisfied that disclosure of the identified information would have a substantial adverse effect on the financial interests of Defence. In light of this consideration I have decided that the identified material is conditionally exempt under section 47D of the FOI Act. My public interest considerations are detailed below.

#### **Section 47D - Public interest considerations**

15. I have found that the identified material is conditionally exempt under section 47D of the FOI Act.

16. Section 11A(5) of the FOI Act requires an agency to allow access to a conditionally exempt document unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest.

17. In determining whether to release the conditionally exempt material, 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. 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.

18. I found that disclosure of this information would not increase public participation in 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).

19. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factor I find particularly relevant to this request is that disclosure could reasonably be expected to prejudice the commercial competitive activities of an agency.

20. For this reason I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47D of the FOI Act.

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

#### **Further Information**

22. The document matching the scope of this request contained a dissemination limiting marker (DLM). In approving this document for public release, I have struck through the DLM.

Chris [REDACTED]

Digitally signed by Chris [REDACTED]  
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Chris [REDACTED]  
Accredited Decision Maker  
Capability Acquisition and Sustainment Group