



**DEFENCE FOI 223/22/23 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:

*All emails and attachments regarding Accommodation Services provided by Perisher Blue Ski Resort, under contract CN ID: CN3785818.*

**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 8 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 these 8 documents in accordance with sections 22 [access to edited copies with exempt or irrelevant matter deleted], 47E(d) [public interest conditional exemptions – operations of agencies] and 47F [public interest conditional exemptions – personal privacy] and 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. third-party consultation responses from Perisher Blue Ski Resort.

## Reasons for Decision

### Section 22 – Access to edited copies with exempt or irrelevant matter deleted

9. Section 22 of the FOI Act provides that if an agency or Minister decides:

*(i) to refuse access to give access to an exempt document; or*

*(ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access...*

10. The documents contained information, such as mobile telephone numbers and personal email addresses, which has been excluded from the scope of the request. I consider this information to be outside the scope of this request.

11. Accordingly, I have decided that it is reasonably practicable to remove this information, and release the documents to you in that form.

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

12. 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:*

...

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

13. In relation to section 47E(d) of the FOI Act, paragraph 6.123 of the Guidelines advises that, where the document relates to certain operations of agencies, the decision maker must address whether ‘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. Upon examination of the documents, I have identified staff names and contact details that are not publicly known.

15. 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 s 47E(d). The IC made this determination due to reasonable expectation that the release of staff’s 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.

16. I am satisfied that if the contact details of Defence personnel were made publicly available, it would have substantial adverse effects on the proper and efficient operation of existing 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.

17. The Guidelines provide, at paragraph 6.120, that I should consider whether disclosure of the information/documents, ‘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 documents 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.

18. Accordingly, I am satisfied that this information contained in these documents is conditionally exempt under section 47E(d) of the FOI Act.

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

19. 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).*

20. The FOI Act shares the same definition of ‘personal information’ as the *Privacy Act 1988* (Cth). The Guidelines provide at paragraph 6.128 that:

*Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:*

*(a) whether the information or opinion is true or not; and*

*(b) whether the information or opinion is recorded in a material form or not.*

21. I found that the documents contain personal information of Perisher Blue Ski Resort employees. This includes their names, position titles and contact details which would reasonably identify third parties.

22. Section 47F(2) provides that I need to assess if the disclosure of the personal information would be unreasonable. In my assessment of whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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. the effect the release of the personal information could reasonably have on the third party.

23. In considering the above, I am satisfied that the release of the personal information would be an unreasonable release of personal information and could reasonably be expected to cause harm to their privacy. Accordingly, I have decided that the relevant information in the documents is conditionally exempt under section 47F(1) of the FOI Act.

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

24. Section 47G(1) 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;*

25. On review of the documents, I identified information associated with the business operations of a third party, Perisher Blue Ski Resort.

26. When assessing whether the disclosure of business information is unreasonable, I considered the following factors:

- a. whether the information could interfere with the business or professional affairs;
- b. the nature of the information; and
- c. if the disclosure of the information could interfere with, or prejudice the supply of information within future commercial arrangements between the Commonwealth and the business.

27. Against the above criteria I found that the:

- a. the information could interfere with the business or professional affairs, particularly the management and assessment of personnel;
- b. information within the documents contains personal information of employees; and
- c. the information is not readily available from publicly accessible sources.

28. The Guidelines 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.*

29. Taking into account the above factors, I consider that the release of the material would be an unreasonable disclosure of information and potentially cause harm to the lawful undertakings of the business and commercial affairs of the third party. I therefore have decided that this information is conditionally exempt under section 47G of the FOI Act.

### **Public interest conditional exemptions – Sections 47E and 47F and 47G**

30. Section 11A 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.*

31. I have identified that some of the information identified within the documents are conditionally exempt under sections 47E(d), 47F and 47G of the FOI Act. In making this determination I considered the relevant factors favouring disclosure as set out in section 11B(3) of the FOI Act, which favours access to a document:

- (a) promote the objects of the Act (including all the matters set out in Sections 3 and 3A)

- (b) inform debate on a matter of public importance; and
- (c) promote effective oversight of public expenditure.

32. While I understand that there is a continued and strong public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of links to processes with procurement within industry and the confidentiality of staff and third parties. Further, it is imperative that Defence retains and maintains strong partnerships with industry and to the further public without fear that material, when corresponding or connecting with the Department at a potential stakeholder level will be released without authorisation or awareness.

33. 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; and
- f. the personnel management function of an agency.

34. I find that, on balance, the public interest factors against disclosure outweigh the factors for disclosure as the conditionally exempt material would not increase public participation in Defence processes, nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

35. I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47E(d), 47F and 47G of the FOI Act.

### **Further Information**

36. 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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John   
Accredited Decision Maker  
Royal Australian Navy