



*Objective Reference: AHQ/OUT/2022/BQ44086132*

## **DEFENCE FOI 226/22/23 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:

*Emails, including attachments, specifically relating to the establishment and management of Contract Number CN3748338.*

### **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 two documents, totalling 12 pages, as matching the scope of this request.
4. I have added an FOI reference number and Document number to each of the documents.

### **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 two 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 33(a) [Documents affecting national security, defence or international relations], 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
  - b. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) 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).

### **Reasons for decision**

#### **Section 22 – Edited copies with exempt or irrelevant matter deleted**

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

- (i) *to refuse 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*

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

9. The documents provided contain information (mobile telephone numbers) that do not relate to the scope of the request. I consider this information as outside the scope of this request.

10. Considering all of the above, I decided it was reasonably practicable to remove the material that did not fall within scope of this request.

### **Third party consultation**

11. I consulted with a third party regarding their business information contained in the documents. The third party objected to the release of their business information and I agree with their contentions.

#### **Section 33(a)(i) and (ii) – Documents affecting national security and defence of the Commonwealth**

12. Section 33(a) provides that:

*A document is an exempt document if disclosure of the document under this Act:*

- (a) *would, or could reasonably be expected to, cause damage to:*
  - (i) *the security of the Commonwealth;*
  - (ii) *the defence of the Commonwealth ...*

13. In regards to the terms ‘would, or could reasonably be expected to’ the Guidelines provide:

*5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.*

*5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.*

14. In regards to security of the Commonwealth, the Guidelines state:

*5.29 The term 'security of the Commonwealth' broadly refers to:*

- (a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests*
- (b) the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations (see definition in s 4(5)).*

*5.30 A decision maker must be satisfied that disclosure of the information under consideration would, or could reasonably be expected to, cause damage to the security of the Commonwealth.*

15. In regards to defence of the Commonwealth, the Guidelines state:

*5.34 The FOI Act does not define 'defence of the Commonwealth'. Previous Administrative Appeals Tribunal (AAT) decisions indicate that the term includes:*

- meeting Australia's international obligations*
- ensuring the proper conduct of international defence relations*
- deterring and preventing foreign incursions into Australian territory*
- protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

*5.35 Damage to the defence of the Commonwealth is not necessarily confined to monetary damage ... However, in all cases, there must be evidence that the release of the information in question will be likely to cause the damage claimed.*

16. I identified information in the documents which upon release could reasonably be expected to cause damage to the security and defence of the Commonwealth, this being contact details of Army personnel whose identities are protected.

17. In evaluating the potential harmful effects that the release of this information may have, I considered the information provided in the Guidelines on the mosaic theory. The Guidelines state:

*5.39 When evaluating the potential harmful effects of disclosing documents that affect Australia's national security, defence or international relations, decision makers may take into account not only the contents of the document but also the intelligence technique known as the 'mosaic theory'. This theory holds that individually harmless pieces of information, when combined with other pieces, can generate a composite — a mosaic — that can damage Australia's national security, defence or international relations. Therefore, decision makers may need to consider other sources of information when considering this exemption.*

*5.40 The mosaic theory does not relieve decision makers from evaluating whether there are real and substantial grounds for the expectation that the claimed effects will result from disclosure.*

18. I find that disclosure of the information exempt under section 33(a)(i) and (ii) would cause, or could reasonably be expected to cause, damage to the security and defence of the Commonwealth by identifying personnel whose identities are protected. By releasing this information, an adversary may be able to take steps or devote resources to target the personnel and the capabilities which they support, the outcome of which would cause damage to the security and defence of the Commonwealth.

19. Accordingly, I have decided that the specified material is exempt pursuant to section 33(a)(i) and (ii) of the FOI Act.

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

20. Section 47E of the FOI Acts provides:

*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.*

21. In relation to section 47E(d), the Guidelines explain that:

*6.120 An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient.*

*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....*

22. Some documents contain direct contact information of an employee of the Defence Vendor Data Services section.

23. Defence email addresses follow an identifiable sequence, so by releasing the employee's name, it would be possible to determine the employee's email address. If the

name and direct email address of the employee were released publicly it would diminish Defence's ability to triage, process and analyse vendor queries as they would bypass the single point of contact facility.

24. Additionally, when Departmental emails are sent to external stakeholders, no identifying information is included.

25. The Guidelines advise me to consider whether release of the information could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. I do not consider that releasing the name and email address of the staff member would lead to any positive changes to Defence's processes for vendor data management. Further, information providing the correct contact method for vendor information is being released as part of this FOI request.

26. Taking into account the above factors, I consider that the release of the name and email address of the staff member would adversely affect Defence's management of Vendor Data Services and is conditionally exempt under section 47E(d) of the FOI Act.

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

27. While assessing the documents, I identified information of a person not employed by the Commonwealth.

28. When assessing 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.

29. 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
- c. information is not readily available from publicly accessible sources.

30. The release of the name of an individual, could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of an individual who is not a Commonwealth employee would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

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

31. Upon examination of the documents, I identified business information of a financial nature of Chatterbox Public Speaking. I found the material to be conditionally exempt under section 47G of the FOI Act which 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*

32. 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.

33. 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 information related to the financial information (unit quantity, price, payment requirements, banking details and vendor information) of a third party could adversely affect the business affairs and profitability of the third party.

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

35. 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 below.

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

36. I have found that the identified documents are conditionally exempt under sections 47E(d), 47F and 47G of the FOI Act. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed ‘unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest’.

37. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and it would allow the applicant access to their own personal information.

38. 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).

39. 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:

- a. prejudice the protection of an individual's right to privacy
- b. prejudice the operations of the Defence Vendor Data Services section.

40. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47E(d) and 47F of the FOI Act.

41. There is 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 is able to collect and retain sensitive commercial information without fear that the material would be released without authorisation.

42. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

43. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, I have decided that it would be contrary to the public interest to release the information considered exempt under sections 47E(d), 47F and 47G of the FOI Act.

**Joanne**

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**Mrs Joanne**  
Army Headquarters FOI Manager  
Accredited Decision Maker