



## DEFENCE FOI 288/22/23 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 correspondence since May 22nd 2022 held by the Department of Defence in relation to the provision of an office or offices within Defence facilities in Canberra for the Minister for Defence.*

*I am also seeking all correspondence held by the Department in relation to the provision of carparking space to the Minister for Defence at Defence facilities in Canberra.*

*I am not seeking drafts of the above documents.*

### 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 item/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 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 irrelevant or exempt under sections 33 [documents affecting national security, defence or international relations], 47E(d) [public interest conditional exemptions – certain operations of agencies] and/or 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;

- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
- e. advice received from third party consultation; and
- f. advice received from subject matter experts within Defence.

### **Reasons for decision**

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

9. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse access, or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.

10. Some of the documents contain mobile telephone numbers of staff. In accordance with the exclusion outlined above, I have considered this information as falling outside the scope of the request.

11. In accordance with section 22(2) of the FOI Act, I am satisfied it is reasonably practicable to remove the irrelevant and exempt material from the documents, and release them to you in an edited form.

#### **Section 33 – Documents affecting national security, defence or international relations**

12. Section 33(a) of the FOI Act states:

*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.*

13. In regards to the terms 'would or could reasonably be expected to' and 'damage', 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.*

#### *Security of the Commonwealth: [Damages]*

5.31 *The meaning of ‘damage’ has three aspects:*

- i. *that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. *the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. *The organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

14. Additionally, the Guidelines state:

*Security of the Commonwealth*

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.*

15. I have identified material in the documents which, upon release, could reasonably be expected to cause damage to the security of the Commonwealth. Disclosing the locations of security zones and ICT equipment presents a security risk. This is because such disclosure could provide unauthorised third parties with knowledge on the measures applied by Defence to protect classified material, the unauthorised disclosure of which could cause significant damage to Australia's national security.

16. Based on the above considerations, I find the specified material to be exempt under section 33 of the FOI Act.

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

17. 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.*

18. 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.*

19. I have identified that the documents contain the names and contact details of Defence staff that are not publicly available, nor would they be reasonably known to you.

20. 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 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.

21. 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 family names, email addresses and phone numbers could therefore reasonably be expected to prejudice the operations of Defence.

22. 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 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.

23. Accordingly, I am satisfied that this information is conditionally exempt under section 47E(d) of the FOI Act.

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

24. Section 47F of the FOI Act states provides that:

*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).*

25. The FOI Act shares the same definition of ‘personal information’ as the Privacy Act 1988 (Cth). The Guidelines provide that:

*6.128 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.*

26. I found that the documents contain personal information of third parties that is not reasonably known to you. This includes names, roles and contact information which would reasonably identify a third party.

27. In accordance with section 47F(2) of the FOI Act, 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; and
- e. the responses received as part of the third party consultation.

28. Having taken all this into consideration, I am satisfied that the relevant information is conditionally exempt under section 47F(1) of the FOI Act.

### **Public interest considerations – section 47E(d) and 47F**

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

*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.*

30. In favour of disclosure, I have considered the factors set out in section 11B(3) of the FOI Act, and consider that the release of the material would promote the objects of the FOI Act by providing access to government held information, and it would promote oversight of public expenditure.

31. 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).

32. Against disclosure, 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.

33. I have not considered any of the factors listed in section 11B(4) of the FOI Act when making this decision.

34. Taking all of this into consideration, I am satisfied that, on balance, the public interest factors against disclosure outweigh the factors for disclosure and the relevant information in the documents is exempt under sections 47E(d) and 47F of the FOI Act.

#### **Further Information**

35. 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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Accredited Decision Maker  
Associate Secretary Group