



## DEFENCE FOI 458/22/23 – 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 meeting schedules, meeting agendas, talking points and briefing papers that pertain to the meetings between the Minister for Defence, the Hon Richard Marles MP and United States Secretary of Defense, Lloyd J. Austin III at The Pentagon on Friday 3 February 2023 (US time zone).*

### 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 seven (7) 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:
  - a. partially release 4 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 [Documents affecting national security, defence or international relations] and 47E(d) [Public interest conditional exemptions – certain operations of agencies] of the FOI Act; and
  - b. refuse access to 3 documents on the grounds that the documents are considered exempt under sections 33 [Documents affecting national security, defence or international relations] and 47E [Public interest conditional exemptions – certain operations of agencies] 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. advice on FOI requirements from the Media and Information Disclosure Branch within the Department of Defence.

### Reasons for decision

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

9. Upon examination of the documents, I have identified information that is not relevant to the subject matter of the FOI request. I have also identified that some information is exempt from disclosure under the FOI Act. In accordance with section 22 of the FOI Act, I have decided to prepare edited copies of the relevant documents where I have removed the irrelevant and exempt information before disclosure.

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

10. 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:*

*...*

*(iii) the international relations of the Commonwealth*

11. 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.*

*International Relations: [Damages]*

*5.37 ... The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption*

*that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.*

12. Additionally, the Guidelines state:

*International relations*

*5.36 The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.*

13. Upon examination of the documents, I identified information which, if released, could reasonably be expected to damage international relations. Specifically:

- a. agendas and talking points for meetings with foreign counterparts that reveal sensitive information about bilateral relationships, defence priorities and strategies that could damage bilateral relationships and consequently national security if revealed to the public; and
- b. venue information for meetings with foreign counterparts that could affect physical security at US government facilities.

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

**Section 47E - Public interest conditional exemptions – certain operations of agencies**

15. Upon examination of the material, I identified documents containing information relating to Defence personnel contact details and identification.

16. 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.*

17. The Guidelines explain the term 'substantial adverse effect' to broadly mean:

*5.20 ... 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.'*

18. The Guidelines further explain:

*6.101 For the grounds in [section 47E(d)] to apply, the predicted effect needs to be reasonably expected to occur. ... There must be more than merely an assumption or allegation that damage may occur if the document were to be released.*

*6.103 An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the decision maker's statement of reasons, if they can be included without disclosing exempt material.*

19. Departmental staff names, as well as their direct contact details in the form of email addresses and phone numbers, have not been released. Defence has dedicated avenues of communication for interfacing with the public. It is submitted that the release of this specified information, which is not publicly available, would divert customers through incorrect/inappropriate channels and could substantially reduce the efficiency of Defence's 'proper and efficient' arrangements for responding to correspondence. As such, I submit that the release of this information could substantially and adversely affect Defence's operations.

20. For the reasons above, I consider that the release of this information would have a substantial adverse effect on the proper and efficient conduct of the operations of Defence and is, therefore, conditionally exempt under section 47E(d) of the FOI Act.

21. 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 - Section 47E**

22. I have found that the identified documents contain conditionally exempt material under section 47E(d) of the FOI Act.

23. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors are that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource.

24. However, disclosure of this information would not increase public participation in the Government processes (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussions of Government activities (section 3(2)(b) of the FOI Act).

25. 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 group of individuals; and
- c. the personnel management function of an agency.

26. It is for these reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is not in the public interest to release this information to you. Accordingly, I deem the relevant information exempt under section 47E of the FOI Act.

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



Lisa [redacted]  
Accredited Decision Maker  
Strategy Policy and Industry Group

30 March 2023