



## DEFENCE FOI 578/22/23 - 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:

*... Defence's contract with Adecco for recruitment services (CN3923195) in relation to the transition and any details of financial incentives or remuneration, as referred to in an overview of stakeholder roundtable discussions held in late 2021 for the Royal Commission into Veteran Suicides.*

### Background

#### FOI decision maker

5. I am the authorised officer pursuant to section 23 of the FOI Act approved to make a decision on this FOI request.

#### Documents identified

6. I identified one (1) document as matching the description of the request.

#### Exclusions

7. Defence has only considered final versions of documents. Duplicates of documents are also excluded from this request.

#### Decision

8. I have decided to:

- a. partially release the 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] and section 47G [Public interest conditional exemptions – business] of the FOI Act; and
- b. remove irrelevant material in accordance with section 22 of the FOI Act.

### **Material taken into account**

9. 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 from subject matter experts within Defence Force Recruiting
  - f. responses received as part of third party consultations.

### **Reasons for decision**

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

10. 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 to an exempt document or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.

11. I am satisfied that it is reasonably practicable to remove the exempt material and release the document to you in an edited form.

#### **Section 47D – Public interest conditional exemptions – financial or property interests of the Commonwealth**

12. 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.*

13. Paragraph 6.90 of the Guidelines indicate that:

*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.*

14. In regards to the term 'substantial adverse effect,' the Guidelines state:

*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'.*

15. Upon examination of the document, I identified conditionally exempt, commercially sensitive information, the disclosure of which would place the Commonwealth at a considerable commercial disadvantage. The publication of this material could jeopardise or significantly undermine negotiations on future contracts for recruitment services to the Australian Defence Force.

16. The need for contracted recruitment services will remain in place for the foreseeable future and the Commonwealth must be able to achieve value for money for the taxpayer during future negotiations with potential providers. I consider that disclosure of this information could reasonably be expected to adversely affect any such negotiations, unduly weaken the Commonwealth's position, and prejudice the frank and open supply of information to the Commonwealth.

17. Taking the above into consideration, I am satisfied that the relevant information is conditionally exempt under section 47D of the FOI Act. My public interest considerations are detailed further below.

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

18. Upon examination of the document, I identified business information belonging to a service provider to Defence.

19. Section 47G 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; or*
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

20. I note that the use of the word 'could' in this provision requires only reasonable consideration of the possibility that disclosure may cause the consequences specified.

21. The Guidelines explain, at paragraph 6.188:

*The test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect....These considerations require a weighing of a public interest against a private interest, preserving the profitability of a business, but at this stage it bears only on the threshold question of whether the disclosure would be unreasonable.*

22. The Guidelines also 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 (s 47G(1)(a)).*

23. The Guidelines go on to provide, at paragraph 6.192, '[t]he term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

24. I consider that the disclosure of the specified material contained in the documents would have an unreasonable adverse effect on the lawful business affairs of Adecco Australia, a contractor to the Commonwealth. The document provides details of a business contract which are unique to the negotiated position between Adecco Australia and the Commonwealth. The disclosure of this material would result in the release of information that is not in the public domain and have the effect of exposing commercial sensitivities of Adecco Australia to their competitors, which would harm their business.

25. Defence formally consulted with Adecco Australia in accordance with section 27 [consultation – business documents] of the FOI Act. Adecco Australia contested to the release of their business and financial information, and I agree with their arguments.

26. Accordingly, I am satisfied that the relevant information is conditionally exempt under section 47G(1)(a) of the FOI Act. My public interest considerations are detailed further below.

### **Public interest considerations – sections 47D and 47G**

27. I have found that the identified document contains material that is conditionally exempt under sections 47D and 47G of the FOI Act. Section 11A(5) of the FOI Act 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.

28. In determining whether to release the document, 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. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to public interest.

29. Specifically, I considered if disclosure of the document 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.

30. Disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, there is a strong public interest in not releasing information that could unreasonably affect a business.

31. I find that disclosure of this information would not increase public participation in Defence processes (Section 3(2)(a) of the FOI Act) and neither would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

32. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors that I find particularly relevant to this request are that the release of this information could reasonably be expected to:

- a. prejudice the competitive commercial activities of an agency
- b. harm the interests of an individual or group of individuals,
- c. prejudice the management function of an agency,
- d. prejudice the protection of an individual's right to privacy, or
- e. harm the interests of an individual or group of individuals.

33. Accordingly, I find that the release of the information identified would inhibit the proper administration of public monies by jeopardising future Commonwealth negotiations

and making commercially sensitive information available to Adecco's competitor organisations.

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

35. After weighing all of the above, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure. I have decided that it would be contrary to the public interest to release the information considered exempt under sections 47D and 47G of the FOI Act.

Digitally signed by  
chris

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**Group Captain Chris**  
Accredited Decision Maker  
Defence People Group