



BP34422621

**DEFENCE FOI 843/22/23**

**STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982**

1. I refer to the request by [REDACTED] (the applicant), dated and received on 19 June 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“• *Originating contract requirements/statement of work(s) for, and the contract award decision documentation for CN3522669, including contract amendments: -A15, -A16, -A17 and -A18;*

• *Originating contract requirements/statement of work(s) for, and the contract award decision documentation for CN3847202, including contract amendments -A1; and*

• *The original RFT 4593, with associated contract award decision documentation for CN3688178-A5 and -A10.*”.





### **FOI decision maker**

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

### **Documents identified**

8. I have identified 23 documents as falling within the scope of the request.
9. The decision in relation to each document is detailed in the schedule of documents.

### **Exclusions**

10. 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**

11. I have decided to:
- a. partially release 19 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 47C [public interest conditional exemptions – deliberative processes], 47E(d) [public interest conditional exemptions - certain operations of agencies] and 47G [public interest conditional exemptions – business] of the FOI Act;
  - b. refuse access to four documents on the grounds that the documents are considered exempt under sections 47E(d) [public interest conditional exemptions - certain operations of agencies] and 47G [public interest conditional exemptions – business] of the FOI Act; and
  - c. remove irrelevant material in accordance with section 22 of the FOI Act.

### **Material taken into account**

12. In making my decision, I have had regard to:
- a. the terms of the request;
  - b. the content of the identified documents in issue;
  - c. relevant provisions of the FOI Act; and
  - 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 – Access to edited copies with exempt or irrelevant matter deleted

13. 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.
14. The documents contain exempt and irrelevant material and information, primarily mobile phone numbers, PMKeyS numbers and signatures that do not relate to the request.
15. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents to you in an edited form.
16. Where a decision maker denies access to a document, section 22(1) of the FOI Act requires that they consider releasing the document with exempt matter deleted, if possible.
17. Paragraph 3.98 of the Guidelines provides that:

*...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.*
18. I have considered disclosing document (Item 1) 1, (Item 2) 5, 6 and (Item 3) 4, to you with deletions, but have decided to refuse access to the documents as they would be meaningless and of little or no value once the exempt material is removed.

### Section 47C – Public interest conditional exemptions - deliberative processes

19. Section 47C(1) of the FOI Act states:

*(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*
  - (a) an agency; or*
  - (b) a Minister; or*
  - (c) the Government of the Commonwealth.*
20. In reviewing the documents, it is apparent they contain information that meets the definition of deliberative matter, by being in the nature of opinion, advice and recommendation prepared for the purposes of a deliberative process.
21. The documents in question have been produced to provide advice and recommendations for deliberation by a person who can provide section 23 commitment approval of relevant money under the *Public Governance, Performance and Accountability Act 2013*.

22. Releasing deliberative matter contained in such records could adversely affect Defence's ability to conduct this process in future. Defence commanders and managers rely on their staff to provide opinion, advice and recommendations when it comes to decision making processes. If employees felt Defence lacked integrity with respect to protecting the confidentiality of records providing frank advice and recommendations, this could lead to a detrimental change in process affecting the proper and efficient conduct of Defence operations.

23. Based on my consideration of the above I am of the view that release of this information would have a substantial adverse effect on the deliberative process involved in the functions of Defence.

24. Section 47C(2)(b) of the FOI Act provides that deliberative matter does not include purely factual material. The Guidelines, at paragraph 6.73, state that:

*Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.*

25. Accordingly, I am satisfied that the information contains matter that meets the definition of deliberative material, and that where the content is purely factual, it is embedded in, or intertwined with the deliberative content and cannot be excised. Therefore, I have decided that the relevant information is conditionally exempt under section 47C of the FOI Act.

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

26. 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:*

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

27. 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.*

28. In the case of 'ABK' and *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 section 47E(d). The IC made this determination due to reasonable expectation that the release of 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.

29. I am satisfied that were the contact details of Defence personnel 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.

30. The Guidelines provide, at paragraph 6.120, that I should consider whether disclosure of the information ‘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.’ 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.
31. Accordingly, I am satisfied that all staff information contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.
32. The documents contain detailed information relating to Defence requirements for the management of aircraft and engine structural integrity for ADF aircraft platforms. In addition to the above, the document contains information regarding Defence’s relationship with the contractor who provides this service, and how this relationship is managed.
33. Disclosing information regarding Defence requirements for the management of aircraft and engine structural integrity for ADF aircraft platforms and the relationship between Defence and a contracted service provider may interfere with ongoing activities and operations. Proper management of the structural integrity of aircraft and engines contributes greatly to achieving the conduct of successful operations in Defence, and to release the information held within the documents may cause a detrimental impact between Defence and the contracted service provider which could lead to a reduction in the operational availability of aircrafts.
34. I have considered the Guidelines at paragraph 6.120. Given the nature of the document, 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.
35. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

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

36. Section 47G(1)(a) 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.*

37. 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.

38. 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.*

39. 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)).*

40. The Guidelines go on to provide, at paragraph 6.192, 'the 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'.

41. On review of the information contained within the documents, it is reasonable to expect the information would unreasonably affect Defence's business affairs in the following adverse ways:

- a. provide insight into how Defence conducts value for money assessments, which could provide a competitive advantage to companies who could use this information when competing for Defence contracts;
- b. provide insight into how Defence conducts and assesses contractor's during performance reviews, which could provide a competitive advantage to companies who could use this information when competing for Defence contracts;
- c. provide insight into the business relationship between Defence and a contracted service provider, which could adversely impact Defence's reputation and relationship with said service provider; and
- d. reveal internal codes and processes used by Defence for recording expenditure against the relevant areas, which could adversely affect Defences financial affairs.

42. Accordingly, I am satisfied that the documents are conditionally exempt under section 47G(1)(a) of the FOI Act.

### **Public interest considerations - sections 47C, 47E(d) and 47G**

43. 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.*

44. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
  - (b) inform debate on a matter of public importance;*
  - (c) promote effective oversight of public expenditure;*
  - (d) allow a person to access his or her own personal information.*
45. In my view, 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).
46. 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:
- the protection of an individual's right to privacy;
  - the interests of an individual or a group of individuals;
  - an agency's ability to obtain similar information in the future; and
  - the management function of an agency.
47. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. As I have established above, the release of the names, email addresses and phone numbers of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of Defence personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.
48. Further, disclosing information regarding Defence requirements for the management of aircraft and engine structural integrity for ADF aircraft platforms and the relationship between Defence and a contracted service provider may interfere with ongoing activities and operations. Release of this information could reasonably be expected to lead to a reduction in the operational availability of aircrafts.
49. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.
50. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under sections 47C, 47E(d) and 47G of the FOI Act.

## FURTHER INFORMATION

51. 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.

Paul [REDACTED] Digitally signed  
by Paul [REDACTED]  
Date:  
[REDACTED] 2023.08.31  
16:00:48 +10'00'

Paul [REDACTED]  
GPCAPT  
Accredited Decision Maker  
Air Force