



Objective Reference: AHQ/OUT/2023/BQ56918518

DEFENCE FOI 193/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the request by [REDACTED] (the applicant), dated and received on 27 August 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“All documents and correspondence related to the limited tender with Dicker Data registered on AusTender as CN3973503.”



FOI decision maker

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

Documents identified

5. I have identified eight documents as falling within the scope of the request.
6. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

7. 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

8. I have decided to:
- a. partially release eight 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 47E(d) [public interest conditional exemptions – certain operations of agencies], 47F [public interest conditional exemptions – personal privacy] and 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 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;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. consultation with a third party.

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. The documents contain exempt and irrelevant material and information (mobile phone numbers, signature and PMKeyS numbers) that do not relate to the request.

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

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

13. 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.*

14. 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.

15. 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.

16. 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 that 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.

17. 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.

18. Accordingly, I am satisfied that all staff information contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

19. The documents contain information on Defence’s assessment of a project and costs associated with that project. I consider the release of this information would or could substantially adversely affect the proper and efficient conduct of Defence. This would impact the Department’s ongoing working relationship with the third party and reduce the flow of information between the Department and the third party.

20. The Guidelines advise me to consider whether 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 information could reasonably be expected to improve Defence’s assessment of a tender process.

21. Taking into account the above factors, I consider that the release of the information is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

22. Section 47F(1) of the FOI Act states:

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).

23. 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.*

24. I found that the documents contain personal information of other people. This includes their names, email addresses and contact phone numbers which would reasonably identify third parties.

25. In my assessment of whether the disclosure of personal information is unreasonable, I considered the following factors in accordance with section 47F(2):

- 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; and
- d. the effect the release of the personal information could reasonably have on the third party.

26. I found that the specific personal information listed is not well known, individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the document and the information is not readily available from publicly accessible sources.

27. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Section 47G – Public interest conditional exemptions – business

28. 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.

29. 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.

30. 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.

31. 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)).

32. 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’.

33. The release of the information would disclose commercial and contractual information of a business that could unreasonably affect their business affairs in the following adverse ways:

i. it would adversely impact the organisations commercial affairs and information about commercial business agreements with a client; which in turn will directly impact the organisation’s ‘money making affairs’;

34. Accordingly, I am satisfied that the information is conditionally exempt under section 47G(1)(a) of the FOI Act.

Public interest considerations - sections 47E(d), 47F and 47G

35. 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.

36. 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.*

37. 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).

38. 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 confidential information; and
- an agency’s ability to obtain similar information in the future.

39. 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.

40. 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.

41. 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 47E(d), 47F and 47G of the FOI Act.

FURTHER INFORMATION

42. 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.

Joanne

Digitally signed by Joanne

Date: 2023.11.06 18:27:08
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Mrs Joanne
Accredited Decision Maker
Army Headquarters
Department of Defence