



## **DEFENCE FOI 293/23/24**

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

1. I refer to the request by [REDACTED] (the applicant), dated and received on 22 September 2023 by the Department of Defence (Defence), for access to the following documents under the Freedom of Information Act 1982 (Cth) (FOI Act):

*1. All briefing held by the Department to the Minister for Defence and/or the Secretary of Defence associated with a \$4 million contract variation to the Australian Strategic Policy Institute - the variation was signed late June/early July 2023.*

*2. All briefing held by the Department to the Minister for Defence and/or the Secretary of Defence associated with a \$6.5 million contract variation to the Australian Strategic Policy Institute - the variation was signed circa July/August 2023.*

#### **Background**

2. [REDACTED]

#### **FOI decision maker**

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

#### **Documents identified**

4. I have identified three (3) documents as falling within the scope of the request.

#### **Exclusions**

5. 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**

6. I have decided to:
- a. partially release the three (3) 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 section 47E [public interest conditional exemptions – certain operations of agencies] of the FOI Act; and
  - b. remove irrelevant material in accordance with section 22 of the FOI Act.

## **Material taken into account**

7. 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);
  - e. the formal consultation response received from the Australian Strategic Policy Institute (ASPI) under section 27 of the FOI Act; and
  - f. the formal consultation response received from the Department of the Prime Minister and Cabinet (PM&C).

## **REASONS FOR DECISION**

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

8. 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.
9. The three documents contain exempt material and information (e.g. mobile telephone numbers, signatures) that does not relate to the request.
10. 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.

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

11. 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.*

12. 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.*

13. 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.

14. 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.
15. 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.
16. Further, I found that the contact information was included in the documents to facilitate the direct engagement between ASPI and Defence for the administration of the grant. This information was provided by both parties with a reasonable expectation of privacy. I consider the release of individual contact detail would diminish the ability of Defence to manage strategic policy grant matters in an efficient and consistent manner.
17. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

#### **Public interest considerations – Section 47E(d)**

18. 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.*

19. 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.*

20. 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).
21. 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;
- an agency's ability to obtain confidential information;
- an agency's ability to obtain similar information in the future; and
- the management function of an agency.

22. 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.

In addition, the contact information contained in the documents was provided to Defence or ASPI with a reasonable expectation that it would be confidential between the parties and used only for the purposes of administering the grant. I consider release of that contact information could diminish Defence's ability to collect and use similar information in future, which would reduce the effectiveness of managing its grants.

23. 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.
24. 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 section 47E of the FOI Act.

#### **FURTHER INFORMATION**

25. I also received advice from the Department of the Prime Minister and Cabinet regarding information that had originated from their officers. I have considered their advice in making my decision, which did not change my reasoning above.
26. Some of the documents matching the scope of this request contained a classification marking or dissemination limiting marker (DLM). Where documents have been approved for public release, the classification or DLM has been struck through.

adam. [redacted]



**Adam** [redacted]

Accredited Decision Maker  
Strategy, Policy and Industry Group  
Department of Defence

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