



DEFENCE FOI 342/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 11 October 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

"1) the final report on the review of remediation work on the rollout of the Australian Government Security Vetting Agency's 'myClearance' vetting system produced by former Defence deputy secretary Stephen Merchant and,

2) the final report on the post-implementation review on the rollout of the Australian Government Security Vetting Agency's 'myClearance' vetting system produced by former Defence deputy secretary Stephen Merchant."

Background

2.

3.

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 one document as falling within the scope of the request.

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 one 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(s) 33(a)(i)

[Documents affecting national security, defence or international relations], 47E(d) [Public interest conditional exemptions – certain operations of an agency] and 47F [Public interest conditional exemptions – personal privacy] of the FOI Act;

- b. refuse Item 2 of the request under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
- c. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

8. In making my decision, I have had regard to:

- a. the terms of the request;
- b. the content of the identified document 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

- 9. 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.
- 10. The document contains exempt material and information (*eg. signatures*) that does not relate to the request.
- 11. 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 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

12. Section 24A(1) of the FOI Act states:

- (1) *An agency or Minister may refuse a request for access to a document if:*
 - (a) *all reasonable steps have been taken to find the document; and*
 - (b) *the agency or Minister is satisfied that the document:*
 - (i) *is in the agency's or Minister's possession but cannot be found; or*
 - (ii) *does not exist.*

13. Paragraph 3.94 of the Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(1):

...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...

14. To ensure that all reasonable steps have been taken in relation to this request, every reasonable avenue of locating potential documents matching Item 2 have been exhausted.
15. In relation to Item 2 of the request, Mr Merchant was engaged by Defence to provide an assessment of the remediation plan for the myClearance system, his work did not extend to a post-implementation review of the remediation plan.
16. I am satisfied that all reasonable steps have been taken to locate the document/s sought by the applicant. I am satisfied that the document/s cannot be found or do not exist, and refuse the request under section 24A(1) of the FOI Act.

Section 33(a)(i) – Documents affecting national security, defence or international relations

17. Section 33(a)(i) 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:*
 - (i) *the security of the Commonwealth*

18. In regard 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.

...

5.31 The meaning of ‘damage’ has three aspects:

- i. that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. the organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

19. In regard to ‘security of the Commonwealth’, the Guidelines provide at paragraph 5.29:

The term ‘security of the Commonwealth’ broadly refers to:

- (a) *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests.*
- (b) *the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth’s international relations (see definition in s 4(5)).*

20. The document contains particular information about the security vetting process that is not in the public domain.

21. Having reviewed the information in light of the Act and the Guidelines, I am satisfied of the real and substantial risk to national security that release of the exempt information would cause. The security clearance assessment process is central to the Australian Government's ability to secure classified information and safeguard against misuse and unauthorised disclosure. Disclosure of the information would undermine the effectiveness of the security vetting process and could increase the risk of misuse of sensitive information.
22. While some of the information may be considered harmless in isolation, when taken in conjunction with other documented information a mosaic is created that may reveal damaging information about the Commonwealth's security clearance processes.
23. In relation to the mosaic effect, paragraph 5.39 of the Guidelines state that:
- When evaluating the potential harmful effects of disclosing documents that affect Australia's national security, defence or international relations, decision makers may take into account not only the contents of the document but also the intelligence technique known as the 'mosaic theory'. This theory holds that individually harmless pieces of information, when combined with other pieces, can generate a composite – a mosaic – that can damage Australia's national security, defence or international relations.*
24. If the Commonwealth's security clearance processes are revealed, the integrity and efficacy of these processes may be compromised, providing scope for clearance applicants to tailor information to the known rigors of the vetting process. This may provide an inaccurate picture of individual applicants, who may then be assessed as suitable to access nationally classified information. This could increase the risk to the Commonwealth of unsuitable persons gaining access to classified or sensitive government information or resources.
25. Accordingly, I am satisfied this information is exempt under section 33(a)(i) 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 document 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 document is conditionally exempt under section 47E(d) of the FOI Act.
32. In addition, as stated in paragraph 20, the document contains information about the security vetting process that is not in the public domain.
33. Defence relies on frank and honest answers from applicants related to the security clearance process. Material, which if publicly released, could provide an understanding of the factors assessed, sources used, and information considered by Defence to be of significance, and may allow clearance subjects to provide artificial answers to demonstrate superficial behaviours. This may provide an inaccurate picture concerning individual applicants, who may then be assessed as suitable to access classified or sensitive resources, with a resultant increased risk to the Commonwealth.
34. I therefore consider that this material could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the security vetting operations of Defence. I am satisfied that release of this 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 regarding the security vetting process is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

36. 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).

37. 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.

38. I found that the document contains personal information of another person. This includes their name, age, occupation, employer and phone number which would reasonably identify a third party.
39. 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.
40. I found that the specific personal information listed is not readily available from publicly accessible sources.
41. Taking into account the above factors, I consider the release of the material would be an unreasonable disclosure of personal information of individuals other than the applicant and could reasonably be expected to cause harm to their privacy. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

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

42. 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.

43. 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.*
44. 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).

45. 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 management function of an agency; and
 - the personnel management function of an agency.
46. Furthermore, I have considered factors in relation to the details of security vetting processes within the document. The security clearance process is an intrusive process designed to determine an individual's suitability to access classified material. Failure to maintain the integrity of this process would have serious adverse effects on national security. For this reason it is imperative that information which may compromise the security clearance process is not released to the public. Any information that would reveal the specific information gathered by Australian Government Security Vetting Agency (AGSVA) about an individual for vetting purposes will therefore be withheld. Information about certain operations of Defence, if released, could affect the integrity and efficacy of the Defence's internal processes and procedures regarding security clearances.
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 at paragraph 29, 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. 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.
49. 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) and 47F of the FOI Act.

FURTHER INFORMATION

50. The document contains a dissemination limiting marker (DLM), the DLM has been struck through.

Claire

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Claire

Accredited Decision Maker
Security and Estate Group
Department of Defence