



Objective Reference: AHQ/OUT/2023/BQ60760684

DEFENCE FOI 312/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the request by [REDACTED] (the applicant), dated and received on 29 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. Tender documents in relation to Army AVNCOMD GSAS project.*
- 2. Any orders or directions relating to the GSAS project.*
- 3. Budget Allocation on the project*
- 4. Documents pertaining to the purpose and implementation of the project,*
- 5. Approval process for the expenditure of funds.*
- 6. Performance indicators on whether the project is providing a return on investment.*

Timeframe: from date
01/01/2022 - 12:00am

Timeframe: to date
29/09/2023 - 12:00am

FOI decision maker

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

Documents identified

7. I have identified 18 documents as falling within the scope of the request.
8. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

Personal email addresses, 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

9. I have decided to:
 - a. release two documents in full;
 - b. partially release 16 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(c) and 47E(d) [public interest considerations – 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

10. 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. advice received from Aviation Command (AVNCOMD).

REASONS FOR DECISION

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

11. 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.

12. The documents being released contain irrelevant material and information such as mobile phone numbers and PMKeyS numbers that do not relate to the request.

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

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

14. Section 47E(c) 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 management or assessment of personnel by the Commonwealth or by an agency*

15. The Guidelines provide, at paragraph 6.113, that:

Where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely, that:

- an effect would reasonably be expected following disclosure*
- the expected effect would be both substantial and adverse.*

16. I find that the material contained in the documents relates to the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and workplace health and safety.

17. 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. 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.

18. 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.

19. 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.

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

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

21. 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:

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

22. 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.

23. 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.*' The information, if released, could affect the integrity and efficacy of the Department of Defence's internal processes and procedures regarding the implementation of new programmes and systems to assist training and capability. If the information was made publicly available it could reasonably have an adverse effect on Defence's ability to conduct, manage and perform its functions in the future.

24. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

Section 47G(1)(a) – Public interest conditional exemptions – business

25. 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.

26. 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.

27. 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.

28. 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)).

29. 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’.

30. I note that this provision requires consideration of the reasonable expectation, rather than certainty, to be applied in deciding whether disclosure would cause the consequences specified.

31. The application of this exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that disclosure of business and commercial information of the identified organisations, could affect Defence’s future relationships with external service providers.

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

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

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.

32. 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.*

33. 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).

34. 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.

35. 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.

36. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of the material contained in the document

37. 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.

38. 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(c), 47E(d) and 47G of the FOI Act.

FURTHER INFORMATION

39. 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 [redacted]

Date: 2024.02.12

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Mrs Joanne [redacted]
Accredited Decision Maker
Army Headquarters
Department of Defence