Australian Government

Defence

DEFENCE FOI 658/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [redacted] (the applicant), dated and received on 15 November 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

   Ministerial submissions and/or briefing provided to the Minister for Defence, the Hon Richard Marles MP, that concerns the supply of Bushmaster protected mobility vehicles to the Indonesian National Armed Forces (TNI).

   I do NOT seek access to duplicates of any document captured within the scope of the request; nor the mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent.

   I do ask that junior official's position or titles be left unredacted, along with email domains that provide useful information as to the origin and destination of communication e.g. '[redacted]@defence.gov.au'.

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 five (5) documents as falling within the scope of the request.

5. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

6. Defence has only considered final versions of documents.

Decision

7. I have decided to:

   a. partially release five (5) 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 33

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

b. 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 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

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 documents contain exempt material and information that do not relate to the request.

11. 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 33(a)(iii) – Documents affecting national security, defence or international relations

12. Section 33(a)(iii) 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:*
> *(iii) the international relations of the Commonwealth*

13. 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.

14. In regard to 'international relations', the Guidelines provide at paragraph 5.36:

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

15. I find that disclosure of the documents exempted under section 33(a)(iii) of the FOI Act would cause, or could reasonably be expected to cause, damage to the international relations of the Commonwealth. The documents contain information which, if disclosed, would negatively impact our bilateral defence relationship with Indonesia.

16. The disclosure of this information would, or could reasonably be expected to cause damage to the Commonwealth's working relations with the Republic of Indonesia. I am of the view that if this information became publically known, foreign governments and their officials would be less willing to engage with Australian government officials on bilateral initiatives of importance to our national interests in the future.

17. Accordingly, I am satisfied that the specified information is exempt under section 33(a)(iii) of the FOI Act.

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

18. 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.

19. 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.

20. 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.

21. 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 contact details could, therefore, reasonably be expected to prejudice the operations of Defence.

22. 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.

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

Section 47F – Public interest conditional exemptions - personal privacy

24. 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).*

25. 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:*
> *whether the information or opinion is true or not; and*
> *whether the information or opinion is recorded in a material form or not.*

26. I found that the documents contain personal information of multiple persons. This includes their name and phone numbers, which would reasonably identify the third parties.

27. 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.

28. 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.

29. 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

30. 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.*

31. 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.*

32. 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).

33. 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;
- the management function of an agency; and
- the personnel management function of an agency.

34. 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 contact details 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.

35. Additionally, I do not see any public interest in the release of third party personal information that Defence has obtained in the course of conducting its usual operations. Defence has an obligation to protect third party information it holds from public disclosure through a process such as FOI, and there is a general public expectation that their own personal information would not be released through a similar process.

36. 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.

37. 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

38. 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.

Robin
Accredited Decision Maker
Strategy Policy and Industry Group
Department of Defence
Date: 6 March 2024