



## DEFENCE FOI 883/23/24

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

1. I refer to the request by [REDACTED] (the applicant) for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*Copies, including drafts, of whole of government talking points relating to Senator Lambie's communication with the ICC [International Criminal Court] in mid-2023.*

#### 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.

#### Document identified

5. I have identified one document falling within the scope of the request:
  - a. 230623 – Talking Points – Senator Lambie's communication with the International Criminal Court.

#### Decision

6. I have decided to partially release the 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 47E(d) [Public interest conditional exemptions-certain operations of agencies] of the FOI Act;.

#### Material taken into account

7. In making my decision, I have had regard to the:
  - a. terms of the request;
  - b. content of the identified documents in issue;
  - c. relevant provisions of the FOI Act; and
  - d. 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

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

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

10. 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.*

11. The Guidelines, at paragraph 6.115, 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.*

12. In the case of *'ABK' and Commonwealth Ombudsman* [2022] AICmr 44, the Information Commissioner found that where the direct contact details of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The Information Commissioner 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 Information Commissioner 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.
13. I am satisfied that were the names of non-Senior Executive Service Defence personnel made publicly available, it would have a substantial adverse effect 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 could, therefore, reasonably be expected to prejudice the operations of Defence.
14. Accordingly, I am satisfied that the names of non-Senior Executive Service Defence personnel contained within the document is conditionally exempt under section 47E(d) of the FOI Act.

### Public interest considerations – section 47E(d)

15. 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.*

16. 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;*
  - ...
  - (d) allow a person to access his or her own personal information.*
17. In my view, disclosure of the names of non-Senior Executive Service Defence personnel 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).
18. Paragraph 6.233 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.
19. 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 of non-Senior Executive Service 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 names, allowing direct access of Defence personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.
20. 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.

21. 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(d) of the FOI Act.

Catherine



Digitally signed by Catherine



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**Catherine**

Air Commodore  
Accredited Decision Maker  
Associate Secretary Group  
Department of Defence