



DEFENCE FOI 703/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 23 February 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

... copies of all emails and attachments, receipts and credit card statements regarding contract CN ID: CN4016811 (Entertainment services, MCard000000042218991, Match Hospitality, Zurich, Switzerland, published 16 Nov 2023)...

Background

2. On 5 March 2024, Defence consulted with the applicant in order to clarify the term 'other documents'. On 6 March 2024, the applicant advised that the term 'other documents' refers to any attachments to emails included within the scope of the request.
3. On 22 March 2024, the period for dealing with the request was extended from 24 March 2024 until 23 April 2024 under section 15(6) [extension of processing period to comply with requirements of section 26A, 27 or 27A] of the FOI Act to enable consultation with a business in accordance with section [27] of the FOI Act.
4. On 17 April 2024, with the applicant's written agreement Defence extended the period for dealing with the request from 23 April 2024 until 7 May 2024 in accordance with Section 15AA [extension of time with agreement] of the FOI Act.
5. On 29 April 2024, with the applicant's written agreement Defence extended the period for dealing with the request from 7 May 2024 until 23 May 2024 in accordance with Section 15AA [extension of time with agreement] of the FOI Act.

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 twenty-seven (27) 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

9. Personal email addresses, signatures, PMKeyS numbers and 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

10. I have decided to:

- a. release thirteen (13) documents in full;
- b. partially release thirteen (13) 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(a) (i) and (iii) [Documents affecting national security, defence or international relations], 47E [public interest conditional exemptions - certain operations of agencies], 47F [Public interest conditional exemptions - personal privacy] and 47G [public interest conditional exemptions – business] of the FOI Act;
- c. refuse access to one (1) document on the grounds that the document is considered exempt under sections 47F [Public interest conditional exemptions - personal privacy] and 47G [public interest conditional exemptions – business] of the FOI Act; and
- d. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

11. 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 consultation with the Department of Foreign Affairs and Trade (DFAT).

REASONS FOR DECISION

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

12. 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.
13. The documents contain exempt material and information that does not relate to the request. 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.
14. Further, where a decision maker denies access to a document, section 22(1) of the FOI Act requires that they consider releasing the document with exempt matter deleted, if possible.

15. Paragraph 3.98 of the Guidelines provides that:

...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.

16. In view of the above, I have considered disclosing the documents to you with deletions, but have decided to refuse access as the remaining material would be meaningless and of little or no value once the exempt information is removed.

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

17. Section 33(a) 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

*...
 (iii) the international relations 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. I identified information regarding the security arrangements of senior government officials of the Commonwealth, and personal information about the schedules of senior government officials of the Commonwealth, which, if released, could reasonably be expected to cause damage to the security of the Commonwealth. It is

important to keep this information secure in order to help protect the physical safety and integrity of high-ranking Australian officials and visiting overseas dignitaries. Revealing these details could compromise operational security and allow malicious actors to gain insight into Defence's activities not only on this occasion but in the future.

21. 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.

22. I find that disclosure of the information 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. I also found that disclosure of the specified information could reasonably be expected to damage international relations. This information includes security arrangements and scheduling information of foreign governments, internal deliberations and planning for engagements with foreign counterparts (which reveal sensitive information about defence priorities that could affect bilateral relationships) and, consequently, national security, if revealed to the public. If this information were to be released by Defence without specific authorisation from the relevant foreign country, it would likely cause damage to international relations of the Commonwealth and may diminish the confidence which other countries have in Australia as a reliable recipient of their confidence, making those countries less willing to cooperate with Australian agencies in the future.
23. Accordingly, I am satisfied that the information is exempt under sections 33(a)(i) and 33(a)(iii) of the FOI Act.

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

24. Section 47E 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.*

25. 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.

26. 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.

27. 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 direct contact details could, therefore, reasonably be expected to prejudice the operations of Defence.
28. 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.
29. 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

30. 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).

31. 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.

32. I found that the information contained personal information of another person/s. This includes their names, email addresses and phone numbers which would reasonably identify a third party.
33. 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.
34. 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.

35. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Section 47G – Public interest conditional exemptions – business

36. 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:

(d) 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.

37. 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.

38. 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.

39. 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)).

40. The Guidelines go on to provide, at paragraph 6.192, ‘[t]he 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’.

41. I consider that the disclosure of the specified material contained in the document would have an unreasonable adverse effect on the lawful business affairs of a third party organisation. I identified that the documents contained commercially sensitive information of third parties. I am confident that the release of this information would unreasonably affect the organisations’ business affairs in an adverse way, by providing a competitive advantage to competitors, which would impact the commercial projects and financial endeavours of third parties. These observations were upheld during third party consultations, which reconfirmed that the business affairs of third parties would be adversely impacted should the information in question be released.

42. Accordingly, I am satisfied that the personal information is conditionally exempt under section 47G of the FOI Act.

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

43. 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.

44. 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.*

45. 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).

46. 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 competitive commercial activities of an agency;
- harm the interests of an individual or group of individuals;
- prejudice the protection of an individual's right to privacy;
- harm the business, commercial or financial affairs interests of an organisation; and
- prejudice the management function of an agency.


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, the release of the direct 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.

48. While I consider that the release of information removed under section 47F of the FOI Act may be of some interest to the applicant, its disclosure would not inform public debate on any matter of public importance in a meaningful way, nor would it promote effective oversight of public expenditure. In my view, it would be contrary to the public interest to disclose personal information of third parties. The public interest is better served in protecting the privacy of individuals' personal details contained within the documents from release to the public.

49. While I also consider that the release of information removed under section 47G of the FOI Act may be of interest to the applicant, the disclosure of such material could provide competitors with insights into commercially sensitive business operations of a

third party. The release would not additionally inform public debate on any matter of public importance in a meaningful way, nor would it promote effective oversight of public expenditure. Given Defence's requirement to maintain strong links with industry, it is imperative that Defence be able collect and retain sensitive commercial information without Defence's commercial partners fearing the unauthorised publication of such material in breach of commercial-in-confidence.

50. 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.
51. 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), 47F and 47G of the FOI Act.



Jasmin [Redacted]
Accredited Decision Maker
Strategy, Policy and Industry Group
Department of Defence

13 June 2024