



DEFENCE FOI 013/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 03 July 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

In early 2023, the Department of Defence began in internal review into support for Defence APS members who deployed overseas in support of ADF operations. This process was initiated at the direction of the Defence Minister following engagement from a member of the public in September 2022. The outcome of the internal review was the APS Post-Deployment Support Program which was launched in June 2024.

This FOI request is for information which provides insights into the direction from the Minister's office to the department and the decision making behind the outcomes of the internal review. This would include any correspondence, notes or minutes relating to the decision making process for the internal review and the post deployment support program. Also requested is the review itself and details of the post-deployment support program, including earlier draft versions where appropriate.

The purpose of this request is to provide information to analyse whether the original intent of the initial public engagement and ministerial directions align with the outcome delivered by the department.

Timeframe: 01/09/2022 - 30/06/2024

Background

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

FOI decision maker

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

Documents identified

9. I have identified forty-two (42) documents as falling within the scope of the request.
10. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

11. Signatures 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.

Decision

12. I have decided to:
 - a. release three (3) documents in full; and
 - b. partially release thirty-six (36) 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 [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 three (3) documents on the grounds that the document is considered exempt under section 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

13. 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);
 - e. advice received following consultation with a third party.

REASONS FOR DECISION

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

14. 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.
15. The documents identified in the schedule of documents as being released in part contain exempt and irrelevant material that do not relate to the request.
16. 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.
17. Additionally, 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.
18. 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.
19. I have considered disclosing the relevant document to you with deletions, but have decided to refuse access as it would be meaningless and of little or no value once the exempt material is removed.

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

20. 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.
21. 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 operations in an expected manner.
22. 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.

23. 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, phone numbers and desk numbers could, therefore, reasonably be expected to prejudice the operations of Defence.
24. Additionally, I have found that the documents contain information relating to the operational processes of Defence, particularly the decision-making behind developing and implementing programs to support former and current APS and ADF members. In order to determine if the disclosure would, or could reasonably be expected to have a substantial, adverse effect on the proper and efficient conduct of the operations of Defence, I have considered the functions of the relevant area within Defence People Group.
25. I consider that the relevant information would, or could reasonably be expected to release information about the internal workings and processes of these areas, which would impact the ability of these areas to undertake their usual functions, including the ability to have frank discussions about relevant processes and their effectiveness. This could reasonably be expected to prejudice the effectiveness of each area's current operations in relation to undertaking their usual functions.
26. The Guidelines provide, at paragraph 6.112, 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, and that there are established processes within Defence to allow line areas to undertake their usual functions, 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.
27. Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on the Department's 'proper and efficient' operations, that is, the Department is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.
28. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

29. 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).

30. The FOI Act shares the same definition of 'personal information' as the *Privacy Act 1988* (Cth). The Guidelines provide that:

6.123 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.*

31. I found that the documents contain personal information of other persons. This includes their names, email addresses, telephone numbers and office locations that if disclosed, would reasonably identify the third parties.
32. 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.
33. I found that the personal information listed was not publicly available or 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.
34. Taking the above into consideration, I am of the view that disclosure of the personal information could reasonably be expected to negatively affect business operations and undertakings by the third parties and Defence.
35. Accordingly, I am satisfied that the information contained within the documents 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:

- (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.*

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 6.185:

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. However, at this stage it bears only on the threshold question of whether the disclosure would be unreasonable.

39. The Guidelines also state, at paragraph 6.181:

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 6.191, '[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. Some documents generated contain information relating to a third-party organisation which, if released, may adversely impact their business affairs in the following ways:

- a. It would adversely impact the organisations reputation and therefore reduce their cliental; which in turn will directly impact the organisation's 'money making affairs'; and
- b. Provide a competitive advantage to competitors who would use the information to capture the market which would impact the organisations 'money making affairs.'

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

Public interest considerations - sections 47E, 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:

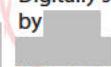
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

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 6.233 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 protection of an individual's right to privacy;
 - the interests of an individual or a group of individuals;
 - an agency's ability to obtain similar information in the future;
 - the management function of an agency; and
 - the personnel 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 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. Additionally, 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 within the documents, particularly those that refer Defence's internal processes which allow Defence to undertake its operational activities in an expected and lawful manner.
49. It is in the public interest that Defence complies with the *Privacy Act 1988* and protects the information of third parties and its personnel. The release of personal information can be reasonably expected to prejudice the protection of an individual's right to privacy and the interests of an individual or group of individuals. Personal information should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.
50. It is in the public interest that Defence allows individuals and organisations to conduct their lawful business, commercial or financial affairs without adversely impacting their reputation or providing a competitive advantage to competitors. The release of business information can be reasonably expected to prejudice an agency's ability to obtain similar information in the future. Some business information has, therefore, not been disclosed, as the public interest against their disclosure outweighs the public interest in their release.
51. 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.
52. 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, 47F and 47G of the FOI Act.

FURTHER INFORMATION

53. Following a review of Defence's Post Deployment Supports, Defence developed a tailored program to help ensure post deployment support is provided to current and former APS employees. Further information on the Post-Deployment Support Program is located on the Defence website and can be accessed through the following link: <https://www.defence.gov.au/about/contact-us/post-deployment-support-program#:~:text=Post%2DDeployment%20counselling,-Provides%20eligible%20employees&text=These%20sessions%20are%20centred%20around,relationships%2C%20and%20other%20wellbeing%20factors.>

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