



DEFENCE FOI 156/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 21 August 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

...*Ministerial Submissions:*

MS23-000638 – Defence Advice to DISR on PsiQuantum proposal for quantum computer

MS23-000209 – Defence advice to DISR on PsiQuantum proposal.

‘no personal information requested’

Background

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

FOI decision maker

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

Documents identified

6. I have identified two documents as falling within the scope of the request.

Exclusions

7. Mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents are excluded from this request. Defence has only considered final versions of documents.

Decision

8. I have decided to:

- a. partially release two 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]; 47B [Public interest conditional exemptions – Commonwealth-State relations etc]; 47C [Public interest conditional exemptions – deliberative processes]; 47E [Public interest conditional exemptions – certain operations of agencies; and 47G Public interest conditional exemptions – business] of the FOI Act; and
- b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

9. 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. third party consultation responses and advice received from courtesy consultation with Department of Industry, Science and Resources..

REASONS FOR DECISION

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

10. 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.
11. The documents being released in part contain exempt and irrelevant material such as mobile telephone numbers that do not relate to the request.
12. 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 – Documents affecting national security, defence or international relations

13. Section 33(a) of the FOI Act relevantly 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:*
 - (ii) the defence of the Commonwealth*
 - (iii) the international relations of the Commonwealth*

14. 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.

...

5.32 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.*

15. In regard to ‘defence of the Commonwealth’, the Guidelines, at paragraph 5.36, note that the FOI Act does not define this term, and refers to previous Administrative Appeals Tribunal (AAT) decisions which indicate that the term includes:

- a. meeting Australia’s international obligations;
- b. ensuring the proper conduct of international defence relations;
- c. deterring and preventing foreign incursions into Australian territory; and
- d. protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.

16. I identified that disclosure of the certain material in one document would, or could reasonably be expected to, cause damage to the defence of the Commonwealth by making public information about the progression of capabilities of a Defence capability. The exempt material contains sensitive information about a capability that could potentially allow those with hostile intentions to identify and exploit the Australian Defence Force, and which would prejudice, or hinder its effectiveness.

17. In regard to ‘international relations’, the Guidelines provide at paragraph 5.39:

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.

18. I find that disclosure of the material exempt 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 relating to the regulations of a foreign government and their implications for Australia.
19. The release of this information would, or could reasonably engender loss of trust and confidence in the Australian government or one of its agencies.
20. I have also taken into account, and placed weight on the intelligence technique known as the 'mosaic theory' in considering the suitability of the documents for disclosure.
21. In this regard, the Guidelines, at paragraph 5.43 provide:

When evaluating the potential harmful effects of disclosing documents that affect Australia's national security, defence or international relations, decision makers may take into account not only the contents of the document but also the intelligence technique known as the 'mosaic theory'. This theory holds that individually harmless pieces of information, when combined with other pieces of information, can generate a composite — a mosaic — that can damage Australia's national security, defence or international relations. Therefore, decision makers may need to consider other sources of information when considering this exemption.

22. In modern society, significant volumes of information exist in the public domain, accessible to the world at large. I am satisfied that release of the material contained within the documents, when combined with information already in the public domain, could allow adversaries to piece together information that would undermine Defence's capability and effectiveness, causing damage to the defence and international relations of the Commonwealth.
23. Based on the above considerations, I am satisfied that the information is exempt under section 33(a)(ii) and 33(a)(iii) of the FOI Act.

Section 47B – Public interest conditional exemptions – Commonwealth-State relations etc.

24. Section 47B(a) of the FOI Act states:

A document is conditionally exempt if disclosure of the documents under this Act:

(a) would, or could reasonably be expected to, cause damage to relations between Commonwealth and a State;

25. I have identified material in the one document that I consider, given the nature of the material, would damage Commonwealth-State relationships if disclosed as the material relates to information not otherwise readily available. The Queensland Government agree with the use of this exemption.
26. Accordingly, I am satisfied that the material is exempt under section 47B of the FOI Act.

Section 47C – Public interest conditional exemptions - deliberative processes

27. Section 47C(1) of the FOI Act states:

*A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*

- (a) an agency; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth.*

28. Upon examination of the documents, I found material containing information relating to opinions, advice and recommendations within ministerial briefs.

29. In making my decision I have considered the question of whether the information is purely factual. I have taken into account the Guidelines at paragraph 6.62, which clarifies ‘purely factual material’ that would not be regarded as deliberative matter would include:

- a. content that is merely descriptive;
- b. incidental administrative content;
- c. procedural or day to day content;
- d. the decision of conclusion reached at the end of the deliberative process;
- e. matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.

30. The content contains deliberative processes used to brief the minister. There is a risk that release of the deliberative matter contained in the documents would harm the conduct of the operation of Defence business including the ability for Defence to present and communicate preliminary advice at the highest levels to the Government. Section 47C(2)(b) of the FOI Act provides that deliberative matter does not include purely factual material. The Guidelines, at paragraph 6.70, state that:

[p]urely factual material’ does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

31. Accordingly, I am satisfied that the documents contain matter that meets the definition of deliberative material, and that where the content is purely factual, it is embedded in, or intertwined with the deliberative content and cannot be excised. Therefore, I have decided that the relevant information is conditionally exempt under section 47C of the FOI Act.

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

32. Section 47E of the FOI Act relevantly 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*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.*

33. Relevant to section 47E(c) of the FOI Act the documents contain the name of an Australian Public Service (APS) employee. The staff name within the documents is not publicly available and disclosure could reasonably be expected to have an adverse effect on the health and wellbeing of the individual concerned.
34. I am satisfied there is a reasonable expectation that the name of APS employee below the Band 1 / 1 Star level could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of personnel concerned. Disclosure of the name could, therefore, reasonably be expected to substantially adversely impact the staff management function by an agency.
35. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of personnel. As I have established above, the release of an APS employee below the Band 1 / 1 Star level can reasonably be expected to prejudice the management functions of an agency. There are existing communication channels and processes to enable the efficient and appropriate liaison with the public. Accordingly, the name of an APS employee below the Band 1 / 1 Star level should not be disclosed, as the public interest against their disclosure outweighs the public interest in release.
36. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(c) of the FOI Act.
37. Relevant to section 47E(d) of the FOI Act 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.
38. It is a primary function of the Department to provide responsive, early visibility of matters, that may require a portfolio Minister's current or future consideration. It is imperative that any such briefing be provided in the most fulsome, timely manner possible, to ensure that the Minister and their staff are well-informed. The office of a Minister is at all times considering a significant volume of material presented by their portfolio agencies, in addition to matters relevant to their electorate and party political matters. It is appropriate that they be able to consider, and where necessary take forward these issues at the time most suited to them.
39. It could reasonably be expected that release of the conditionally exempt material would, or could reasonably be expected to adversely impact the proper and efficient conduct of the operations of the agency, as the Department may be required to substantially alter its submissions process. This could have significant detriment to the

ability to proactively bring forward matters of potential interest to a Minister or their office.

40. 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.’ As identified above, I consider that any changes would not lead to efficiencies, and would instead increase the complexity and have an adverse effect on the agency’s ability to undertake its operations.
41. Taking into account the above factors, I consider that the release of the information would damage the Defence's processes and is therefore conditionally exempt under section 47E(d) of the FOI Act.
42. Based on the above reasons, I am satisfied that the material contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

Section 47G – Public interest conditional exemptions – business

43. 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.

44. 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.
45. 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.

46. 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)).

47. 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'.
48. It is reasonable to expect that the release of that information would unreasonably affect their business affairs in the following adverse 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.'
49. Accordingly, I am satisfied that the information is conditionally exempt under section 47G(1)(a) of the FOI Act.

Public interest considerations - sections 47B, 47C, 47E, and 47G

50. 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.

51. 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;*

52. I have assessed that disclosure of this information would have limited positive impact on public participation in the Defence process (section 3(2)(a) of the FOI Act). I further consider disclosure could have limited benefit to increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act). In making my assessment, I have considered the various publicly available information on Defence'
53. 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 efficient conduct of the operations of the agency, including its management functions;
- the competitive commercial activities of an agency;

- an agency's ability to obtain similar information in the future; and
- the personnel management function of an agency.

54. 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 an APS employee below the Band 1 / 1 Star level can reasonably be expected to prejudice the management functions of an agency. There are existing communication channels and processes to enable the efficient and appropriate liaison with the public. Accordingly, the name of an APS employee below the Band 1 / 1 Star level should not be disclosed, as the public interest against their disclosure outweighs the public interest in release.
55. 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 document, particularly those still under consideration by Defence.
56. 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.
57. 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 47B, 47C, 47E and 47G of the FOI Act.

FURTHER INFORMATION

58. The documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.

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Accredited Decision Maker
Defence Science and Technology Group
Department of Defence