Australian Government



Defence

DEFENCE FOI 522/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by (the applicant), dated and received on 06 January 2025 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

1. The overall project proposal Illawarra Offshore wind proposal request and responses, including: Documents from DCCEEW and or the Minister Bowen asking DoD for input to the Illawarra Offshore Wind Turbine proposal Documents from DoD to DCCEEW and/or Minister Bowen in relation to the Illawarra Offshore Wind Turbine proposal

2. In relation to the above, these should include if available: Supporting risk assessments Supporting briefing documents Notes of meetings/calls

3. Any papers that evidence DoD consideration of key factors, such as: Safety of navigation Safety of flight operations (fixed wing and rotary) Safety of defence personnel Emergency response Impacts on radar operations Vulnerabilities in wartime Impacts or challenges in relation to a future submarine base Any other relevant topics. Risk assessments Navy / Air Force / Army

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 five (5) documents as falling within the scope of the request.
- 7. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

8. Signatures and 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

- 9. I have decided to:
 - a. partially release five 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], 47C [public interest conditional exemptions deliberative process] and 47E [Public interest conditional exemptions certain operations of agencies] of the FOI Act;
 - b. refuse Items 2 and 3 of the request under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
 - c. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

- 10. 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 through a courtesy consultation with the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and the New South Wales Government.

REASONS FOR DECISION

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

- 11. 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.
- 12. The documents identified in the schedule of documents as being released in part contain exempt and irrelevant material such as of staff mobile numbers, signatures and draft documents that do not relate to the request.
- 13. 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 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

- 14. Section 24A(1) of the FOI Act states:
 - (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (*i*) is in the agency's or Minister's possession but cannot be found; or (*ii*) does not exist.
- 15. Paragraph 3.94 of the Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(l):

...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...

- 16. To ensure that all reasonable steps have been taken in relation to this request, every reasonable avenue of locating potential documents matching Items 2 and 3 have been exhausted.
- 17. In relation to Items 2 and 3 of the request, a detailed search for documents was undertaken. This included an initial search on 15 January 2025 of the Defence Records Management System '*Objective*', the Parliamentary Document Management System, relevant desks, drawers, cabinets and safes, personal and group email boxes and personal folders, mobile phones and text messages. The search took four hours to complete with the following key words searched: 'Illawarra', 'offshore' and 'windfarm'.
- 18. In addition, on 17 February 2025 the relevant services in Air Force and Navy undertook a search of their systems for any documents in relation to Items 2 and 3 of the request. The advice received was that no documents existed.

19. I am satisfied that all reasonable steps have been taken to locate the documents sought by the applicant in relation to Items 2 and 3. I am satisfied that the documents cannot be found or do not exist, and refuse the request under section 24A(1) of the FOI Act.

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

20. Section 33(a)(i) 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
- 21. Section 33(a)(ii) 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: (ii) the defence of the Commonwealth*
- 22. 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.

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- 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.*
- 23. In regard to 'security of the Commonwealth', the Guidelines provide at paragraph 5.30:

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)).
- 24. In regard to 'defence of the Commonwealth', the Guidelines, at paragraph 5.36, refer to previous Administrative Appeals Tribunal (AAT) decisions which provide 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.
- 25. I find that disclosure of the information exempt under section 33(a)(i) would cause, or could reasonably be expected to cause, damage to the 'security of the Commonwealth'. The information identified contains specifications and sensitive information relating to Defence systems and capabilities. Disclosure of this information to the public could provide for an ability to assess operational profiles that should otherwise be kept unknown, as the release of the information could reasonably be expected to cause damage to the security of Commonwealth by making public information relating to a Defence system that is sensitive.
- 26. In reference to section 33(a)(ii), I have identified material in the documents which, upon release, would cause, or could reasonably be expected to cause, damage to the defence of the Commonwealth. The documents contain detailed information that, combined with other information, could expose vulnerabilities or uncertainties in Defence systems and therefore jeopardise the Defence of the Commonwealth.
- 27. Accordingly, I am satisfied the information is exempt under sections 33(a)(i) and 33(a)(ii) of the FOI Act.

Section 47C – Public interest conditional exemptions - deliberative processes

28. Section 47C of the FOI Act states:

(1) 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.
- 29. Upon the examination of the documentation, I have identified deliberative matter that is, content that is in the nature of, or relating to either opinion, advice or recommendation that has been obtained, prepared or recorded; or a consultation or

deliberation that has taken place, in the course of, or for the purpose of, a deliberative process of Defence.

30. 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 information contains 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. In relation to section 47E(c) of the FOI Act, the Guidelines provide, at paragraph 6.102, that:

Where the document relates to the agency's policies and practices in relation to to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely, that:

- an effect would reasonably be expected following disclosure
- *the expected effect would be both substantial and adverse.*
- 34. The documents contain the names and contact details of Commonwealth officers below Senior Executive Service (SES) level that are not publically available. I am of the view that disclosure could reasonably be expected to have an adverse effect on the health and wellbeing of these individuals.
- 35. I am satisfied there is a reasonable expectation that the names and contact details of Commonwealth officers could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of personnel. Disclosure of names, email addresses and phone numbers could, therefore, reasonably be expected to substantially adversely impact the staff management function of the Commonwealth in maintaining workplace health and safety standards.

- 36. Further, releasing details about individuals could adversely affect Defence's ability to conduct future activities if employees felt Defence lacked integrity with respect to protecting the confidentiality of their records. Consequently, this would result in a substantial adverse effect on the broader management of personnel.
- 37. In relation 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. The documents contain group inbox details, the release of which would undermine the operation of established channels of communication with the public. I am satisfied that the release of this information would have a substantial adverse effect on the proper and efficient operation of existing public communication channels. Disclosure of internal email inbox details could, therefore, reasonably be expected to prejudice the operations of Defence and that of the Commonwealth.
- 39. Furthermore, the documents contain information and discussions regarding the placement of key infrastructure that has not yet been finalised. The release of this information may jeopardise the project and would not be in the public interest to release.
- 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.' Given the nature of the information, I am satisfied that release could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.
- 41. Accordingly, I am satisfied that the information is conditionally exempt under section 47E of the FOI Act.

Public interest considerations – sections 47C and 47E

42. 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.

43. 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.

- 44. 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).
- 45. 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.
- 46. It is in the public interest that the Commonwealth efficiently and productively operates with regard for the health and wellbeing of its personnel. The release of names and the direct contact details of personnel can reasonably be expected to prejudice the management and personnel management functions of Defence and that of the Commonwealth more broadly. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.
- 47. 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 in the documents, particularly those that refer Defence's internal processes which allow Defence to undertake its operational activities in an expected and lawful manner. This consideration has also been applied for DCCEEW.
- 48. 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.
- 49. 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 47C and 47E of the FOI Act.

FURTHER INFORMATION

50. A document matching the scope of this request was classified. I have declassified the version of the document approved for release.

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Accredited Decision Maker Security and Estate Group Department of Defence