



## DEFENCE FOI 453/24/25

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

1. I refer to the request by [REDACTED] (the applicant), dated and received on 7 December 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

1. *the request the Defence Department sent to Scotwork Australia (including any/all attachments if applicable)*
2. *the quotation provided by Scotwork in response to Defence's request (including any/all attachments, if applicable).*

#### 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.

#### Documents identified

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

#### Exclusions

6. Duplicates of documents are excluded from this request. Defence has only considered final versions of documents.

#### Decision

7. 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 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; and
  - b. remove irrelevant material in accordance with section 22 of the FOI Act.

## Material taken into account

8. 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 following consultation with a third party.

## REASONS FOR DECISION

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

9. 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.
10. The documents contain exempt and irrelevant material that do not relate to the request.
11. Where whole pages are considered to be exempt in full or irrelevant to the scope of the request, these pages have been removed from the released document pack.
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 47E – Public interest conditional exemptions – certain operations of agencies

13. 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:*

...

- (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.*

14. 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 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.*

15. The documents contain the names and contact details of Defence personnel below Senior Executive Service (SES) level that are not publicly 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.
16. I am satisfied there is a reasonable expectation that the names and contact details could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of those individuals. Disclosure of direct contact details could, therefore, reasonably be expected to substantially adversely impact the staff management function of Defence in maintaining workplace health and safety standards.
17. 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.*
18. Upon examination of the documents, I have found that they contain information concerning Government deliberations relating to a formal (limited) tender.
19. I am of the view that the disclosure of the specified information may deter the provision of fulsome information to enable Defence to make decisions in relation to significant projects. After considering the material in depth, it is apparent that the delivery of the contract relies to a significant extent on a willingness for all parties across the Commonwealth, Defence industry and Government to share information frankly and in confidence. This collaborative information sharing is a necessary requirement to allow all parties to negotiate in good faith and make practicable decisions concerning Government projects.
20. 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 contained within the documents, 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.
21. Accordingly, I am satisfied that the information is conditionally exempt under sections 47E(c) and 47E(d) of the FOI Act.

#### **Section 47F – Public interest conditional exemptions - personal privacy**

22. 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).*
23. The FOI Act shares the same definition of 'personal information' as the *Privacy Act 1988* (Cth) (the Privacy Act). 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.*

24. I found that Document 2 contains personal information of individuals other than the applicant. This includes names, phone numbers, email addresses, work experience, home locations and security clearance details, which if disclosed, would reasonably identify the third parties.
25. 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.
26. 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.
27. Accordingly, I am satisfied that the information is conditionally exempt under section 47F(1) of the FOI Act.

#### **Section 47G – Public interest conditional exemptions – business**

28. Section 47G(1) 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.*

*(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*



29. 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.

30. In regard of section 47G(1)(a), 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.*

31. 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)).*

32. 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'.

33. The document contains detailed 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 organisation's reputation and could therefore directly impact the organisation's 'money making affairs'; and
- b. Provide a competitive advantage to competitors who could use the information to enter the market which would impact the organisation's 'money making affairs.'

34. Taking the above into consideration, I am of the view that disclosure could be used by competitors to assess the third parties' services and commercial arrangements, which would, in turn, undermine their future ability to secure contracts.

35. In regard of section 47G(1)(b), the Guidelines explain at paragraph 6.177:

*Section 47G conditionally exempts documents where disclosure 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 (business information), where the disclosure of the information:*

- *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*



36. The Guidelines also state, at paragraph 6.196:

*A document that discloses the kind of information described at [6.177] above will be conditionally exempt if the disclosure could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

37. It is my view that disclosure could have a substantial adverse effect on the future supply of information to Defence by deterring the provision of fulsome advice by its contractors. Third parties could be more circumspect in their sharing of information and records of deliberations or refuse to participate fully in Defence reviews for fear of damage to their reputation or their business, commercial, or financial affairs.
38. Accordingly, I consider that disclosure of the identified information would, or could reasonably be expected to, unreasonably affect a person in respect of their business affairs and could reasonably be expected to prejudice the future supply of information to the Commonwealth and is conditionally exempt under sections 47G(1)(a) and 47G(1)(b).

**Public interest considerations - sections 47E, 47F and 47G**

39. 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.*

40. 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.*

41. 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).
42. 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.
43. 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 the contact details 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.
44. Further, it is in the public interest that Defence complies with the Privacy Act 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.
45. While I consider that the release of the information may be of interest to the applicant, 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 its disclosure outweighs the public interest in its release.
46. 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.
47. 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.

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Accredited Decision Maker  
Guided Weapons and Explosive Ordnance Group  
Department of Defence