



DEFENCE FOI 530/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 9 January 2025 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

Please provide the invoice and a document that contains the scope of the project related to: Ground Transport Services - Passenger road transportation: ROYALE LIMOUSINES – AusTender Contract Notice: CN4119320. If a document does not exist, please provide the final contract and any variations to the contract.

Background



FOI decision maker

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

Documents identified

4. I have identified three (3) documents as falling within the scope of the request.

Decision

5. I have decided to:
 - a. partially release 3 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]; 47E [Public interest conditional exemptions – certain operations of agencies]; 47F [Public interest conditional exemptions – personal privacy]; 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

6. 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. Royale Limousines consultation response.

REASONS FOR DECISION

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

- 7. 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.
- 8. The documents contain exempt material and irrelevant material that does not relate to the scope of the request.
- 9. 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(a)(iii) – Documents affecting national security, defence or international relations

- 10. Section 33(a)(iii) 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:*
- (iii) the international relations of the Commonwealth*

- 11. 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.*

12. 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.

13. I find that disclosure of the material 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. The documents contain information that can identify individuals and may create loss of trust and confidence in Australian government or one of its agencies is a speculative damage which meets the threshold for damage. The release of such information could harm Australia’s international standing and reputation. It could reasonably be expected to limit the Commonwealth’s ability to deal with those countries in relation to similar matters in the future.
14. Accordingly, I am satisfied that the information is exempt under section 33(a)(iii) of the FOI Act.

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

15. 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.*

16. 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.*

17. The documents contain the name and mobile number of a Defence employee. The name and contact details of the Defence employee 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.

18. I am satisfied there is a reasonable expectation that the name and contact details of the Defence employee could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of the Defence employee. Disclosure of name could, therefore, reasonably be expected to substantially adversely impact the staff management function of Defence in maintaining workplace health and safety standards.
19. In relation to section 47E(d) of the FOI Act, the Guidelines provide, at paragraph 6.115, 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.
20. The Guidelines provide, at paragraph 6.112, that I should consider whether disclosure of the material *'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 release of the material may impact the ability of the Department of Defence to undertake competitive tender processes, I am satisfied that release of the material could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.
21. It is for these reasons, I am satisfied that the material is conditionally exempt under section 47E 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 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 the material contains names of other persons, which would reasonably identify 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 names are contained in the documents are not widely known to be associated with this FOI request and the information is not readily available from publically accessible sources.
27. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Section 47G – Public interest conditional exemptions – business

28. 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.

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. 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. Upon examination of the documents, I identified bank details of a third party. Disclosure of this information would, or could reasonably be expected to, release the business information of the third party that is not currently in the public domain.
34. Accordingly, I am satisfied that the material is conditionally exempt under section 47G(1)(a) of the FOI Act.

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

35. 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.

36. 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;*

37. 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).

38. 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;
- 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.

39. 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 material contained in the documents. In my view, it would be contrary to the public interest to disclose names, broken down figures and bank details of a third party.

40. 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.
41. 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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