



**DEFENCE FOI 740/24/25**

**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 March 2025 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*“The probity plans and briefings relating to the framework and management of the program relied upon in the preparation of the following portion of the Department of Defence Answer within the Statement:*

*“To date, frameworks and management of the program are compliant with the Department of Finance Ethics and Probity Procurement requirements, and the Commonwealth Procurement Rules (CPRs).””.*

**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 six documents as falling within the scope of the request.
5. The decision in relation to each document is detailed in the schedule of documents.

**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 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 47F [public interest conditional – personal privacy] and 47G [public interest conditional exemptions – business] of the FOI Act;

- b. refuse access to one document on the grounds that the document is considered exempt under section 47G [public interest conditional exemptions – business] of the FOI Act; and
- c. 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; and
  - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

### **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 identified in the schedule of documents as being released in part contain exempt and irrelevant material such as Objective ID numbers 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.
- 13. 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.
- 14. 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.*
- 15. In the case of Document 4, I have decided to refuse access to the document as it would be meaningless and of little or no value once the exempt material is removed.

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

16. 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).*

17. 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.*

18. Upon examination of the documents, I identified information, specifically the names and ranks of individuals other than the applicant.

19. 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.

20. Against the above criteria I found:

- a. that the specific personal information is not well known;
- b. the individuals whose personal information is contained in the document is not known to be associated with the matters dealt with in the documents; and
- c. the information is not readily available from publicly accessible sources.

21. Taking into account the above factors, I consider the release of the names and ranks of individuals identified in the documents could reasonably be expected to cause harm to their privacy.

22. I have therefore decided that this information is conditionally exempt under section 47F of the FOI Act.

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

23. 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.*

24. 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.

25. 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.*

26. 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)).*

27. 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’.

28. Upon examination of the documents, I identified business information belonging to a service provider to Defence. I also identified information concerning the business, commercial or financial affairs of third party organisations.

29. Where access has been denied under section 47G(1)(a) of the FOI Act, I consider that the disclosure of the specified material contained in the document would have an unreasonable adverse effect on the lawful business affairs of these third party organisations. The disclosure of this material would result in the release of information that is not in the public domain and have the effect of exposing commercial sensitivities of that third party organisation to their competitors, which would harm their business.

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



## **Public interest considerations - sections 47F and 47G**

31. 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.*

32. 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.*

33. 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).

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

35. On balance, I consider the benefit to the public from disclosure is outweighed by the benefit to the public from withholding the information. I have found that at this time, release of the information identified would inhibit the proper administration of public monies by impeding the proper completion of ongoing negotiations.

36. While I consider that release of the material removed under sections 47F and 47G of the FOI Act may be of some interest to the applicant, its disclosure would not inform public debate on any matter of public importance in any meaningful way. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

37. In my view, it would be contrary to the public interest to disclose personal information of third parties and cause unnecessary distress to them. Furthermore, the public

interest is better served in protecting the privacy of individual's personal details contained within the documents from release to the public at large.

38. 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 names, ranks, email addresses and phone numbers 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.
39. 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.
40. 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 47F and 47G of the FOI Act.

#### **FURTHER INFORMATION**

41. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.



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