



**Australian Government**

**Department of Defence**

**FOI 308/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

*Item 1: All documents relating to faults in the propulsion pods of the HMAS Canberra and HMAS Adelaide including emails sent between Royal Australian Navy Personnel and Navantia, BAE and Siemens from 15 March to 24 April.*

*Item 2: All emails sent and received by the Defence media team on Monday 24 April from 10.30am to midnight relating to HMAS Canberra and HMAS Adelaide (including both the central group mailbox and individual team member's mailboxes)*

*Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request.*

**FOI decision maker**

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

**Documents identified**

3. I identified 112 documents as matching the description of the request.
4. The decision in relation to each document is detailed in a schedule of documents.
5. I have added an FOI reference number, Item and Serial number to each of the documents, which corresponds with the schedule.

**Decision**

6. I have decided to:
- a. release three documents in full;
  - b. partially release nine 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 section, 47F [public interest conditional exemptions-personal privacy] of the FOI Act;
  - c. deny access to 100 documents under section sections 47C [public interest conditional exemptions – deliberative process], 47E [public interest conditional exemptions – certain operations of agencies] and 47G [public interest conditional exemptions – business information] of the FOI Act; and
  - d. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

### **Material taken into account**

7. In making my decision, I had regard to:
  - a. the terms of the request;
  - b. the content of the identified documents in issue;
  - c. relevant provisions in the FOI Act;
  - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
  - e. advice received from third parties; and
  - f. advice received from Capability Acquisition and Sustainment Group.

### **Reasons for decision**

#### **Section 47F - Personal privacy**

8. Upon examination of the documents, I identified information, specifically names, phone numbers and email addresses of individuals.
9. When Assessing whether the disclosure of personal information is unreasonable, I considered the follow factors:
  - 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;
  - d. the effect the release of the personal information could reasonably have on the third party.
10. I found that the:
  - a. specific personal information listed is not well known;
  - b. individuals whose personal information is contained in the documents are not associated with the matters dealt with in the documents; and
  - c. information is not readily available from publicly accessible sources.

11. The release of names, phone numbers and email addresses of personnel identified in the document could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

#### **Section 47C – Deliberative process**

12. I found that the documents contain proposed correspondence specifically related to the request. I considered whether this information may be exempt under subsection 47C(1) of the FOI Act.

13. Subsection 47C(1) of the FOI Act states '*A document is conditionally exempt if its disclosure under the 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 process involved in the functions of...an agency...*' Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

14. I have taken into account the Guidelines noting that one consideration in the exemption under section 47C is whether the document includes content of a deliberative matter. Upon examination of the documents, I identified that they contained information which, if released, would disclose deliberative matter, namely information in the nature of opinion and advice related to the pod propulsion system. Release of this material would likely prejudice the Commonwealth's efforts to establish the underlying cause associated with the propulsion issues, together with finalisation of any subsequent commercial negotiations.

15. I then considered the question of whether the information is purely factual material. In relation to section 47C considerations under the FOI Act, I have taken into account the Guidelines that 'purely factual material' that would not be regarded as deliberative matter would include:

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

16. I have also taken into account that while purely factual material is not considered to be deliberative matter, where a document contains factual material that is related to the provision of policy advice and elaborates its context or likely impact, it may potentially come within the deliberative document exemption.

17. Taking the above into consideration, I am satisfied that the documents contain deliberative matter this is conditionally exempt under subsection 47C(1) of the FOI Act.

#### **Section 47E – Certain operations of agencies**

18. Section 47E(d) of the FOI Act states that '*a document is conditionally exempt if its disclosure under this act would, or could reasonably be expected to, do any of the following:*

- d. *...have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*'

19. Upon examination, I found that the documents contained information about sensitive issues affecting the investigation related to the propulsion defects. The exempt material provides information related to the way Defence performs its functions, some of which is not publically available and limited to individuals directly involved in the project. The release of the material at this time would erode trust in a way that would have a substantial and adverse effect on the continuing work on these sensitive issues which could reasonably be expected to adversely affect the proper and efficient conduct of Defence's operations.

20. Taking the above into consideration, I am satisfied that the material is conditionally exempt pursuant to subsection 47E(d) of the FOI Act.

### **Section 47G – Business information**

21. Upon examination of the documents, I identified business information of third parties.
22. As part of my decision making process I undertook third party consultation. I considered the results of the third party consultation when making my decision.
23. Under section 47G of the FOI Act, a document is conditionally exempt if it discloses 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 the 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 consideration of the reasonable expectation rather than certainty to be applied in deciding whether disclosure would cause the consequences specified.
25. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that the effect of disclosing the identified material could have an adverse effect on the companies as disclosure of their commercial activities and methods could diminish the competitive nature of the business and could affect the profitability of their business operations.
26. Taking the above into consideration, I am satisfied that the documents contain material that is conditionally exempt pursuant to section 47G of the FOI Act.

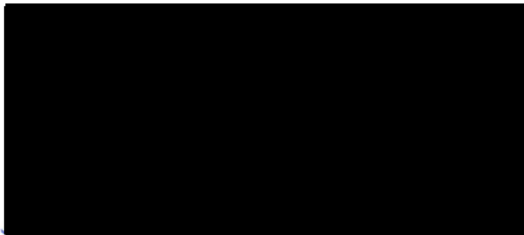
### **Public Interest Conditional Exemption Considerations – section 47F, 47C, 47E and 47G**

27. Section 11A(5) of the FOI Act provides that if a document is conditionally exempt, it must be disclosed *‘unless (in the circumstances) access to the document at the time would, on balance, be contrary to public interest.’*
28. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. One relevant factor is that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource, but this must be balanced against the factors against disclosure. The FOI Act does not specify any factors against disclosure, but the Guidelines, specifically paragraph 6.22, provide a non-exhaustive list of such factors.
29. Of those factors listed in paragraph 6.22, I found that the identified material, if released, could reasonably be expected to:
  - a. prejudice an agency’s ability to obtain confidential information;
  - b. prejudice an agency’s ability to obtain similar information in the future; and
  - c. prejudice the protection of an individual’s right to privacy.
30. I considered that all three factors weighed heavily against disclosure at this time. 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 public interest in maintaining the confidentiality of the information contained in the identified documents. Disclosure of the sensitive material would potentially impact and harm the Commonwealth’s ability to effectively manage its business.

31. I consider that disclosure of the information contained in the identified documents at this time would not increase participation or increase scrutiny of the Government's processes or activities. Quite the contrary, release of the identified documents at this point would greatly hinder current processes and would also reveal sensitive matters affecting the Defence organisation, particularly those related to commercial entities.

32. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

33. On balance, I found that it would be contrary to the public interest to release the information considered conditionally exempt under sections 47F, 47C, 47E and 47G of the FOI Act.



Mr Mark Worrall  
Accredited Decision Maker  
Capability Acquisition and Sustainment Group

#2 September 2017