



Reference: R32754926

FOI 191/17/18 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:

“INV-DWS01-DI-2014-6: Probity Investigation into Procurement Practices within Defence Logistics Transformation Program

excluding personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers. Duplicates of documents and documents sent to or from the applicant are also excluded.

FOI decision maker

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

Documents identified

3. I identified one document as matching the description of the request; being the Investigation Report and 23 Attachments.

Decision

4. I have decided to:
- a. partially release the report 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/or section 47G [public interest conditional exemptions - documents affecting commercial and financial business affairs of an agency] of the FOI Act; and
 - b. 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

5. 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 Audit and Fraud; and
- f. comments received from third parties.

Reasons for decision

Section 47E – Certain operations of agencies

6. Subsection 47E(c) of the FOI Act provides as follow:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected, to have a substantial adverse effect on the management or assessment of personnel by the Commonwealth...

7. In relation to section 47E(c), the Guidelines explain that, where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemptions in section 47E(c) namely, that:

- a. an effect would reasonably be expected following disclosure; and
- b. the expected effect would be both substantial and adverse.

8. For this exemption to apply, the documents must either relate to:

- a. the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; or
- b. the assessment of personnel – including the broader personnel management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment or bonus or eligibility for progression.

9. Upon examination of the document I found that it contained information concerning the behaviour of personnel in a specific work area, including allegations of the probity of procurement practices. Some of these allegations have not been substantiated.

10. Some of the information contained within the document included information that identifies personnel who were voluntarily involved in the investigative process. Releasing this information could reasonably be expected to reduce the likelihood of the same or other individuals participating in future investigations and openly providing information.

11. Subsection 47E(d) of the FOI Act provides as follows:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected, to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

12. Unauthorised disclosure of information potentially identifying the individuals involved in the investigation and information detailing how the investigation is conducted, could reasonably be expected to have a substantial adverse effect on the Department's management

of other complaints that are received through the Defence's Public Interest Disclosure (PID) Scheme.

13. The release of information that could identify, or potentially identify a complainant, or other individuals identified during the course of Defence's investigation of a complaint, could reasonably be expected to affect the willingness of individuals to provide information to Defence for the purpose of investigating complaints. This could reasonably result in a perception that Defence lacks integrity with respect to protecting the confidentiality of investigation records; thus affecting the proper and efficient conduct of the operations of Defence.

14. The disclosure of the information subject to this FOI application could reasonably be expected to prejudice the effectiveness of procedures or methods used in managing internal disclosures made pursuant to the PID Act 2013. Release of PID information could result in prejudice against the activities of the Fraud Control & Investigations Branch and affect the ongoing operation of the Defence PID Scheme.

15. Consequently, I have decided that the material is conditionally exempt under sections 47E(c) and 47E(d) of the FOI Act.

16. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest arguments are detailed below.

Section 47F - Personal privacy

17. Section 47F(1) conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

18. Personal information is defined in section 4 of the FOI Act as having the same meaning as that defined in the *Privacy Act 1988* which is:

Information of 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.*

19. Where section 47F is claimed in the documents, I have found that the information is personal information. Upon examination of the documents, I found they contained names and other personal details, the release of which would constitute an unreasonable disclosure of personal information. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known or to have been associated with the matters dealt with in the documents; and
- c. the availability of the information from publicly accessible sources; and
- d. release of the information would cause stress on the third parties.

20. Against those criteria, I found that:

- a. the specific personal information is not well known to the general community;
- b. the persons to whom the information relates is not known by the general community to have been associated with the matters dealt with in the documents;
- c. the personal information is not readily available from publicly accessible sources;
- d. release of the information would cause stress on the third parties; and
- e. no public purpose would be achieved through release of the information.

21. Noting the findings against the above criteria, I have decided that the disclosure of this information would be an unreasonable disclosure of personal information belonging to other persons. Accordingly, I consider this material to be conditionally exempt under section 47F of the FOI Act.

Section 47G – Business

22. Subsection 47G conditionally exempts a document if its disclosure under the FOI 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 adversely affect the business or commercial or financial affairs; or
- b. could reasonably be expected to prejudice the future supply to the Commonwealth.

23. I note that the use of the word ‘could’ in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself.

24. Where section 47G exemption is claimed in the documents, I have found that information is related to the business affairs of a lawful business. I determined that this information is not publicly available.

25. I have also considered the comments received from a number of third parties who raised concerns about business information being connected to unsubstantiated allegations. Any material identifying specific businesses would affect their future profitability.

26. I am satisfied that the effect of disclosing the identified material could have an adverse effect on the mentioned companies as disclosure of the business names and employees of the business could diminish the competitive nature of the businesses, result in loss or damage to the business and affect the future profitability of business operations.

27. In considering the above I am satisfied that release of the information subject to section 47G exemption would be an unreasonable and unlawful distribution of information. Consequently, I have decided that the material is conditionally exempt under section 47G of the FOI Act.

Public interest considerations – section 47E, 47F and 47G

28. I have found that the identified document is conditionally exempt under sections 47E, 47F and 47G of the FOI Act. Section 11A (5) provides that, if a document is conditionally exempt, it must be disclosed ‘unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest’.

29. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objectives of the FOI Act, as information held by the government is a national resource.

30. While I note that the release of the information being withheld may be of interest to the applicant, it would not inform public debate on any matter of public importance in any meaningful way.

31. Paragraph 6.29 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:

- a. the protection of an individual’s right to privacy;
- b. the interests of an individual or a group of individuals;
- c. an agency’s ability to obtain confidential information;
- d. an agency’s ability to obtain similar information in the future;
- e. the management function of an agency; and
- f. the protection of a (public interest) discloser.

32. It is reasonable to consider that individuals and businesses named in investigation records maintained by Defence expect protection of their privacy, identity and business information. Such individuals would therefore expect Defence to maintain a high level of confidentiality in respect to documents that may lead to their identity being disclosed. This is particularly relevant where the allegations were not substantiated. Any allegations of wrongdoing could significantly affect the profitability of a business.

33. Releasing information about a public interest disclosure, or others involved in the allegations or its investigation, could reasonably be expected to adversely impact on the agency’s ability to gain the confidence of the complainant, or other current or future complainants, and the provision of relevant information in the future. This could significantly undermine any investigative process and undermine the ability of the department to handle complaints without undue external influence.

34. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47E, 47F and 47G of the FOI Act.

35. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

Third party consultation

36. I decided to consult with third parties regarding their information which was contained in the documents. In response to this consultation, some of the third parties have objected to the release of their business/personal information.

37. As I do not agree with all the objections the department is required, under section 27A(6) and 27(6) of the FOI Act, to advise the third parties of my decision. The documents will be provided to the applicant when all review rights of the third parties have been exercised.

Yours sincerely

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Ms Nicola Viney
Accredited Decision Maker
Defence Executive Support Group