



DEFENCE FOI 700/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by Dr Christopher Elliott (the applicant), made on 22 February 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):
“1.) Background documents, emails and correspondence related to the decision to submit the following contract to tender: SON3520191 (see for reference: <https://www.tenders.gov.au/Atm/ShowClosed/c91ba0db-ad70-436f-967c-caef4f72e88a?PreviewMode=False>), date range: 1 January 2022 - 13 December 2022
2.) Emails, briefing documents and correspondence (including emails sent to and from Dr Paul Robards) related to the security and integrity of PMKeyS and other Defence personnel databases, date range: 1 January 2021 - 1 January 2024.”

Background

2. On 19 March 2024, the period for dealing with the request was extended from 23 March 2024 until 22 April 2024 under section 15(6) [extension of processing period to comply with requirements of section 26A, 27 or 27A] of the FOI Act to enable consultation in accordance with section 27 of the FOI Act.

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 nine documents within the scope of this request.

Exclusions

5. Personal email addresses, signatures, and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Decision

6. The decision in relation to each document is detailed in the schedule of documents. In summary, 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 section 47E(d) [public interest conditional exemptions – certain operations of agencies] of the FOI Act;
 - b. refuse access to four documents on the grounds that the documents are considered exempt under section 47E(d) [public interest conditional exemptions – certain operations of agencies] of the FOI Act; and
 - c. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

7. 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. response received from consultation.

REASONS FOR DECISION

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

8. 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.
9. Five documents contain exempt information. I am satisfied that it is reasonably practicable to remove the exempt material and release the documents to you in an edited form.
10. I have considered disclosing the remaining four documents to you with deletions, but have decided to refuse access to the documents as they would be meaningless and of little or no value once the exempt material is removed.

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

11. Section 47E(d) 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:

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency

12. The Guidelines provide, at paragraphs 5.15 - 5.18 that,:

5.15 The test 'would or could reasonably be expected' appears in the following exemptions and conditional exemptions:

i. certain operations of an agency (ss47E(a)-(d))

5.16 This 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.

5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

13. I find that release the material exempt under section 47E(d) of the FOI Act could reasonably be expected to damage the operations of Defence by undermining the capacity to protect information relating to Defence personnel and related capabilities.
14. The redacted material constitutes an assessment of the technical security arrangements for Defence' primary HR system (PMKeyS). As this system contains personal information about all Defence personnel (both ADF and APS), Defence has significant responsibilities to protect this information. The requirement to protect this information is based in both privacy, the operational requirements of Defence, as well as the operations conducted by the ADF.
15. As PMKeyS is the primary repository of information relating to personnel, as well as information relating to the capabilities the ADF can deploy operationally, the security of information in this repository is paramount. An assessment of the state of the security of PMKeyS therefore represents critically sensitive information.
16. Should this information be obtained by malicious parties, there is scope for a malicious actor to direct attacks against aspects of PMKeyS considered to be vulnerabilities. In this way, the safety of information in PMKeyS is at risk. This is then compounded by the risk to both individuals whose details are in PMKeyS, as well as military capabilities maintained by the ADF.
17. The nature of instantaneous global communication, as well as the increasing risks to cybersecurity globally, means that this information can be disseminated widely and immediately. To do so can reasonably be expected to cause damage not only now, but well into the future.
18. The relevant documents contain names and positions of Defence personnel. The names and contact details of Defence personnel within the requested documents are not publicly available and disclosure of these would, or could reasonably be expected to, have a substantial adverse effect on the health and wellbeing of these individuals. In order to ensure these staff maintain their right to be safe at work and safe from harm as a result of their work, their names and details are not freely provided.
19. With respect to staff names, I am satisfied that if these details of Defence personnel are made publicly available, it would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel. I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of Defence personnel. Disclosure of names could therefore reasonably be expected to prejudice the management of personnel as the applicant, with their prior knowledge of Defence, could contact these personnel directly.
20. Further, the FOI Act does not control or restrict any subsequent use of dissemination of information released under the Act. As such, consideration must be given to whether release of names of personnel that are not currently available in the public domain could have a substantial and adverse impact on these individuals. I consider that the disclosure of this information could cause occupational health and safety concerns if the individuals were contacted by the applicant directly. This would, or could reasonably be expected to, substantially and adversely impact the agency's ability to manage its personnel.
21. Accordingly, I am satisfied that the material is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations - Section 47E(d)

22. 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.

23. 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.*

24. 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).

25. Paragraph 6.22 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; and
- the management function of an agency

26. 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.

27. 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 section 47E(d) of the FOI Act.

FURTHER INFORMATION

28. 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.

Bronwyn Graham

Accredited Decision Maker
Defence People Group
Department of Defence