



DEFENCE FOI 669/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 23 February 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“Copy of the first 20 emails (excluding duplicates) between Department of Defence and the contractor, CAE Australia Pty Ltd, regarding disposal of rotary wing aircraft, under contract CN 400 1452 / Agency Reference Number 4600058192.”

Background

2. On 8 February 2024 the applicant submitted a request under the FOI Act to Defence in the following terms:

“I am seeking the following information under the Freedom of Information Act.

Copy of all emails and attachments regarding disposal of rotary wing aircraft by CAE Australia Pty Ltd, under contract CN 4001452 / Agency Reference Number 4600058192.”

3. On 21 February 2024, Defence formally consulted with the applicant in accordance with section 24AB of the FOI Act.
4. On 23 February 2024, the applicant revised the scope of the request as outlined in paragraph 1.
5. On 5 March 2024, with the applicant’s written agreement, Defence extended the period for dealing with the request from 11 March 2024 until 25 March 2024 in accordance with section 15AA [extension of time with agreement] of the FOI Act.
6. On 22 March 2024, the period for dealing with the request was extended from 25 March 2024 until 24 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 with a business in accordance with section 27 of the FOI Act.
7. On 22 April 2024, with the applicant’s written agreement Defence further extended the period for dealing with the request from 24 April 2024 until 10 May 2024 in accordance with section 15AA [extension of time with agreement] of the FOI Act.

FOI decision maker

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

Documents identified

9. I have identified 13 documents, totalling 20 unique emails, as falling within the scope of the request.
10. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

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

Decision

12. I have decided to:
 - a. partially release 13 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 47E [public interest conditional exemptions - certain operations of agencies], 47F [public interest conditional exemptions - personal privacy] and 47G [public interest conditional exemptions – business affairs] of the FOI Act; and
 - b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

13. 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); and
 - e. responses received following consultation with a relevant third party.

REASONS FOR DECISION

14. 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.
15. The documents contain exempt and irrelevant material and information (mobile telephone numbers and signatures) that does not relate to the request.
16. 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 47E – Public interest conditional exemptions – certain operations of agencies

17. 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 the agency.*

18. The Guidelines, at paragraph 6.123, provide that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.

19. In the case of 'ABK' and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner (IC) found that where the direct email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to reasonable expectation that the release of direct contact details would undermine the operation of established channels of communication with the public. Further, the IC accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.

20. I am satisfied that were the direct phone numbers of Defence personnel made publicly available, it would have substantial adverse effects on the proper and efficient operation of existing public communication channels. Further, 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 direct contact numbers could, therefore, reasonably be expected to prejudice the operations of Defence.

21. The Guidelines provide, at paragraph 6.120, that I should consider whether disclosure of the information '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 the direct phone numbers of Defence personnel within the documents are not publicly available and that more appropriate communication channels are already available, I am satisfied that while the release of this information could reasonably be expected to lead to a change in Defence's processes, it would not lead to any efficiencies.

22. Accordingly, I am satisfied that the relevant material contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

23. 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).

24. The FOI Act shares the same definition of 'personal information' as the *Privacy Act 1988* (Cth). The Guidelines provide that:

6.128 *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.

25. I found that the documents contain personal information of other persons. This includes their names, phone numbers, and qualifications which would reasonably identify a third party/parties.
26. 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.
27. I found that the:
- a. specific personal information is not well known;
 - b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents;
 - c. information is not readily available from publicly accessible sources; and
 - d. the release of the names and the personal information of individuals identified in the documents could reasonably be expected to cause harm to their privacy.
28. Accordingly, I am satisfied that the documents are conditionally exempt under section 47F of the FOI Act.

Section 47G – Public interest conditional exemptions – business

29. 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.

30. 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.
31. The Guidelines explain, at paragraph 6.188:

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, but at this stage it bears only on the threshold question of whether the disclosure would be unreasonable.

32. The Guidelines also state, at paragraph 6.184:

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)).

33. The Guidelines go on to provide, at paragraph 6.192, '[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'.

34. In determining the release of the documents, I consider that the disclosure of the specified material contained in the documents would have an unreasonable adverse effect on the lawful business affairs, which in turn will directly impact the organisation's 'money making affairs' of a third party organisation. Further, Disclosure of this information could have a substantial adverse effect on the future supply of information to Defence and unreasonably affect Defence's significant commercial commitments.

35. Accordingly, I am satisfied that the documents are conditionally exempt under section 47G(1)(a) of the FOI Act.

Public interest considerations - sections 47E(d), 47F and 47G

36. 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.

37. 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.*

38. 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).

39. 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 competitive commercial activities of an agency;

- the protection of an individual's right to privacy;
 - the interests of an individual or a group of individuals;
 - the personnel management function of an agency.
40. While I consider the release of the material removed under sections 47E(d), 47F and 47G may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way.
41. 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.
42. 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 direct contact details 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.
43. Lastly, the protection of commercially sensitive information allows businesses to maintain a competitive edge and ensures the confidentiality of proprietary information, trade secrets and client details. This protection allows businesses to maintain their competitive edge, prevents intellectual property theft and preserves trust with Defence. There is a strong public interest in not releasing information that would unreasonably affect Defence's ability to obtain confidential information and continue to obtain this information in future instances. In addition, the disclosure of such material could unduly impact the management functions of the Department.
44. 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(d), 47F and 47G of the FOI Act.
45. 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.



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