



**DEFENCE FOI 926/23/24**

**STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982**

1. I refer to the request by [REDACTED] (the applicant), dated and received on 21 May 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*“1) Copy of contract/relevant documents pertaining to how (...the terms of) University of Adelaide provides legal education to Department of Defence. Indication that University of Adelaide provides legal education to Department of Defence can be found of the University of Adelaide Web page; specifically the article titled: 'Adelaide Law School to provide legal education services Department of Defence' (Posted on Oct 27 2021).*

*2) Copy of audio conversation between [REDACTED] (Defence Legal) and [REDACTED] on 06 May 2024*

*Timeframe: from date*

*01/01/2015 - 12:00am*

*Timeframe: to date*

*21/05/2024 - 12:00am”.*

**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 four documents as matching Item 1 of the scope of the request.
5. I have identified no documents as matching Item 2 of the scope of the request.
6. The decision in relation to each document is detailed in the schedule of documents.

**Exclusions**

7. Defence has only considered final versions of documents.

## Decision

8. I have decided to:
- a. partially release four documents in relation to Item 1 of the request 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 exemptions - personal privacy] and 47G [public interest conditional exemptions – business] of the FOI Act; and
  - b. refuse Item 2 of the request under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

## Material taken into account

9. 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. the response received from the University of Adelaide as part of the formal consultation under section 27 of the FOI Act.

## REASONS FOR DECISION

### Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

10. Section 24A(1) of the FOI Act states:
- (1) An agency or Minister may refuse a request for access to a document if:*
- (a) all reasonable steps have been taken to find the document; and*
  - (b) the agency or Minister is satisfied that the document:*
    - (i) is in the agency's or Minister's possession but cannot be found; or*
    - (ii) does not exist.*

11. Paragraph 3.94 of the Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(1):

*...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...*

12. To ensure that all reasonable steps have been taken in relation to this request, every reasonable avenue of locating potential documents matching Item 2 of the request has been exhausted.

13. In relation to Item 2 of the request, there is no audio recording of a conversation between [REDACTED] (Defence Legal) and [REDACTED] on 06 May 2024 as these conversations are not recorded.
14. While phone calls to a public facing Defence phone number may be recorded, once they are transferred to another area this recording finishes. Accordingly, there is no recording of the conversation between [REDACTED] and the applicant.
15. I am satisfied that all reasonable steps have been taken to locate the document sought by the applicant. I am satisfied that the document cannot be found or do not exist, and refuse the request under section 24A(1) of the FOI Act.

#### **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:

*6.128 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.*

18. I found that the documents contain personal information of a number of persons. This includes their names, signatures and contact information which would reasonably identify third parties.
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;
  - d. the effect the release of the personal information could reasonably have on the third party.
20. I also considered the response received from the University of Adelaide. The University of Adelaide cited section 47(2) and outlined that it would be an unreasonable disclosure of personal information to disclose the names of certain persons, including because release of this information could cause stress to the persons named.

21. I found that the specific personal information listed is not well known, individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the document and the information is not readily available from publicly accessible sources.
22. Accordingly, I am satisfied that the 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 6.188:

*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.*

26. 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)).*

27. 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’.
28. The documents within the scope of the request comprise a set of contractual documents between the University of Adelaide and the Department of Defence. Accordingly, the University of Adelaide was formally consulted.

29. In its response, the University of Adelaide outlined that the disclosure of this information would reasonably affect its lawful business, commercial or financial affairs, in particular that the pricing information:

*'...could be compared with the publicly-listed prices of standard University of Adelaide postgraduate courses to identify the margin charged above standard price for delivery of a bespoke course, and the margin of discount applied for enrolment into existing courses. This information could be exploited to harm the University of Adelaide in future educational tendering.'*

30. This information is not in the public domain and could reasonably be expected to provide competitors of the University of Adelaide with sensitive information that would otherwise only be known, thus conferring an unfair competitive advantage.

31. Accordingly, I consider that the release of the information would, or could reasonably be expected to, diminish commercial value, and is exempt under section 47G(1)(a) of the FOI Act.

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

32. 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.*

33. 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;*


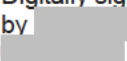
*(d) allow a person to access his or her own personal information.*


34. 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).

35. 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; and
- the interests of an individual or a group of individuals.

36. While I accept that there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining an individual's right to privacy and protecting the commercial interests of third parties.
37. 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.
38. 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.

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Date: 2024.07.10  
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Accredited Decision Maker  
Associate Secretary Group  
Department of Defence