



DEFENCE FOI 528/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), received by the Department of Defence (Defence), for access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). The applicant sought access to:

1. All correspondence and other documents related to information on the F35 and F35 industry participation available on the Department of Defence website, starting October 7, 2023;

2. All correspondence and other documents related to the following URL (<https://www.defence.gov.au/about/capability-acquisition-sustainment-group/our-structure/air/jsf/industry-participation>), starting October 7, 2023.

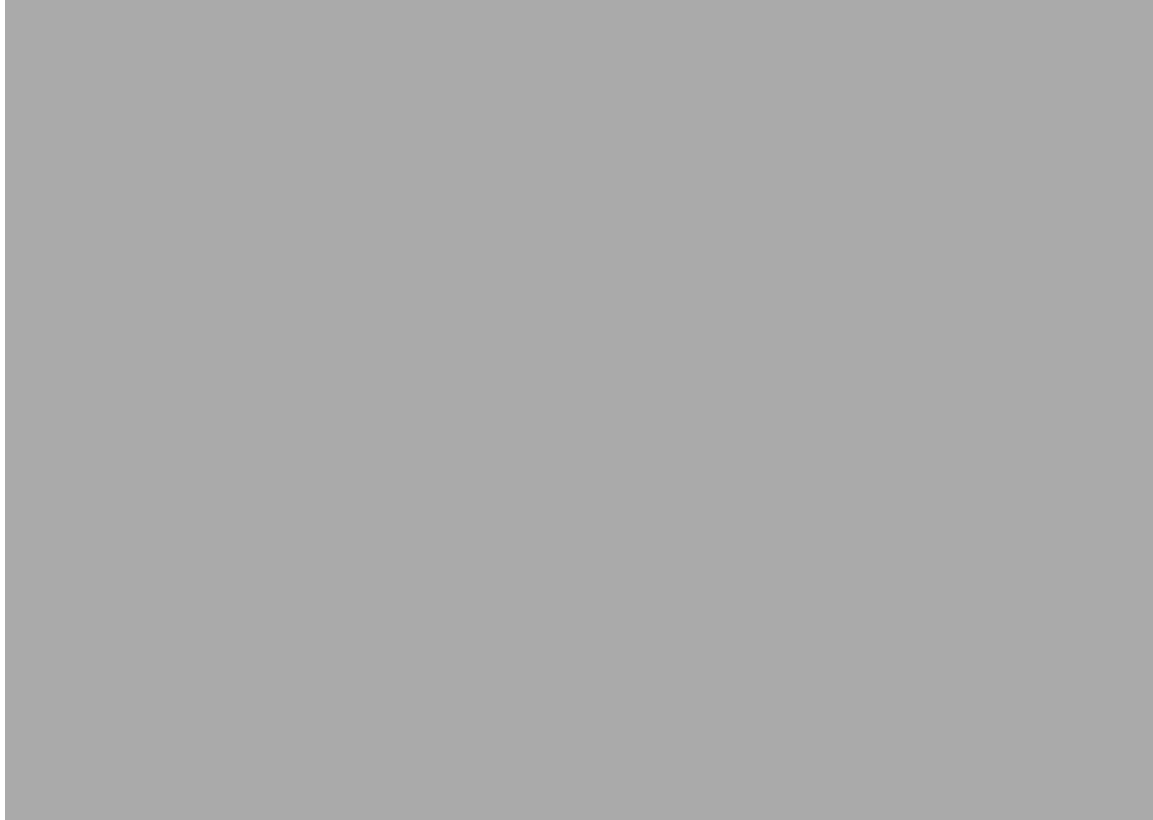
Background

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Authorised Decision Maker

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

Documents identified

7. I have identified nine (9) documents as falling within the scope of the request.

8. The decision in relation to each document is detailed in a schedule of documents.

Exclusions

9. Signatures and unrelated material 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

10. I have decided to:
- a. release three (3) documents in full;
 - b. partially release six (6) documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act on the ground that the deleted material is considered exempt under sections 47C [Public interest conditional exemptions - deliberative processes], and 47E [Public interest conditional exemption - 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

11. 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).

REASONS FOR DECISION

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

12. 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.
13. The documents contain exempt material and information that does not relate to the request.
14. 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 47C – Public interest conditional exemptions - deliberative processes

15. Section 47C(1) of the FOI Act states:
- (1) A document is conditionally exempt if its disclosure under this 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 processes involved in the functions of:

- (a) an agency; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth.*

16. Upon examination of the documents, I found that they contained information relating to internal processes of Capability Acquisition and Sustainment Group, including how they engage with and provide recommendations to areas within the Group.
17. I have considered whether the information was purely factual. I have taken into account the Guidelines, at paragraph 6.66, which clarify ‘purely factual material’ that would not be regarded as deliberative matter as:
- a. content that is merely descriptive;
 - b. incidental administrative content;
 - c. procedural or day to day content;
 - d. the decision of conclusion reached at the end of the deliberative process;
 - e. matter that was not obtained, prepared or recorded in the course of, or for the purpose of, a deliberative process.
18. Section 47C(2)(b) of the FOI Act provides that deliberative matter does not include purely factual material. The Guidelines, at paragraph 6.73, state that:

[p]urely factual material’ does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

19. Accordingly, I am satisfied that the information contains matter that meets the definition of deliberative material, and that where the content is purely factual, it is embedded in, or intertwined with the deliberative content and cannot be excised. Therefore, I have decided that the relevant information is conditionally exempt under section 47C of the FOI Act.

Section 47E – Public interest conditional exemption—certain operations of agencies

20. Section 47E 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.*

21. 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.

22. 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.

23. I am satisfied that were the contact details of Defence personnel made publicly available, it would have a substantial adverse effect 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 names, email addresses and phone numbers would, or could, therefore, reasonably be expected to prejudice the operations of Defence.
24. 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 contact details within the documents are not publicly available and that more appropriate, communication channels are already available, and that there are established processes within Defence to allow line areas to undertake their usual functions, I am satisfied that release of the information could reasonably be expected to lead to a change in Defence’s processes that would not lead to any efficiencies.
25. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations - sections 47C and 47E(d)

26. 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.

27. 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.*

28. 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).

29. 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 interests of an individual or a group of individuals;

- the management function of an agency; and
 - the management function of an agency.
30. 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 operations 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.
31. Additionally, 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 strong public interest in maintaining the confidentiality of the material contained within the documents, particularly those that refer to Defence’s internal processes which allow Defence to undertake its operational activities in an expected and lawful manner.
32. 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.
33. 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 47C and 47E(d) of the FOI Act.

FURTHER INFORMATION

34. 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.

Duncan



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Duncan 

Accredited Decision Maker

Capability Acquisition and Sustainment Group

Department of Defence