



Reference: FOI 563/23/24

FOI 563/23/24 - STATEMENT OF REASONS UNDER SECTION 55G OF THE FREEDOM OF INFORMATION ACT 1982

1. I refer to [REDACTED] (the applicant) request for an Information Commissioner (IC) review of the Department of Defence's (Defence) deemed decision of 15 March 2024.

Background

2. On 18 December 2023, the applicant made the following request under the *Freedom of Information Act 1982* (Cth) (FOI Act):

Please disclose the Contract of purchase between the Commonwealth of Australia represented by the Department of Defence (delegate could be [REDACTED], Manager Property Acquisitions, Mining & Native Title) and the Seller Peter Camm of the property Glenprairie Station Glenprairie via Marlborough Queensland.

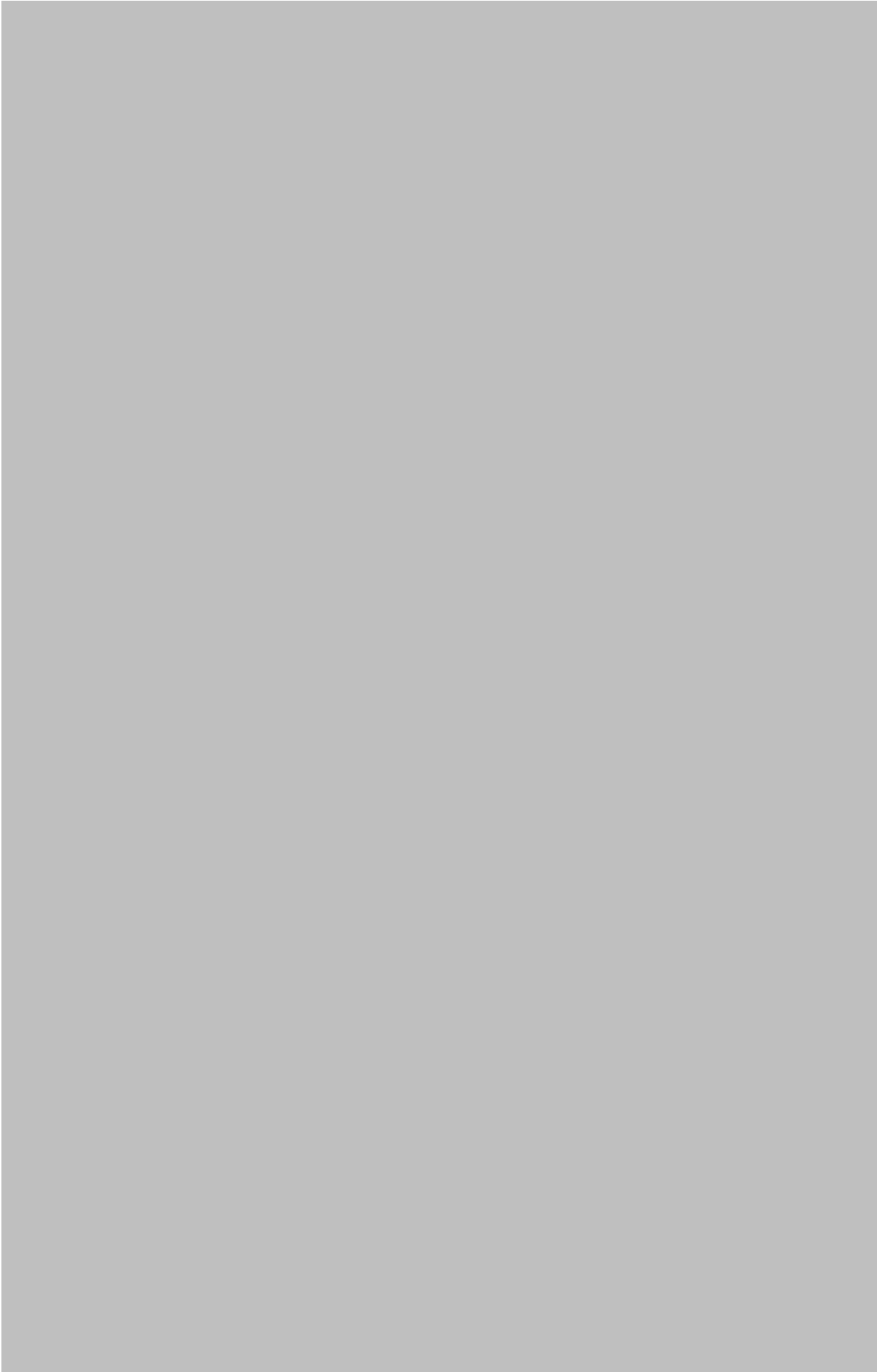
3. The applicant provided the following information to assist Defence in processing the request:

The acquisition took place under Minister's sec 22 (1) declaration of suitability of the land for the Australia Singapore Shoalwater Bay Military Training Initiative. followed by the acquisition by agreement between the parties.

[REDACTED]

7. On 13 February 2024, Defence provided to the applicant with a decision which identified one document falling within the scope of the request. The decision refused access to the document in full under section 47E(d) of the FOI Act [public interest conditional exemption – certain operations of agencies].

[REDACTED]



Reviewing officer

18. I am authorised to make this revised decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

Revised decision

19. After careful consideration, I have decided to vary the original decision by partially releasing the contract with exemptions applied to information on pages 3, 12, 15, 16, 17 and 19-24 of the attached PDF document bundle, on the grounds that the information is exempt under sections 45 and 47F of the FOI Act.

Material taken into account

20. In arriving at my decision, I had regard to:
- a. the scope of the applicant's request and the original decision;
 - b. the applicant's subsequent internal review application;
 - c. the applicant's application for review to the IC;
 - d. relevant provisions in the FOI Act;
 - e. the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
 - f. advice from Directorate of Estate and Infrastructure Law dated 18 July 2024;
and
 - g. third party consultation responses.

FINDINGS AND REASONS**Section 45 – Documents containing material obtained in confidence**

21. Section 45 of the FOI Act states:

Documents containing material obtained in confidence

- (1) *A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.*
- (2) *Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:*
 - (a) *a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
 - (b) *an agency or the Commonwealth.*

22. At paragraph 5.183 the FOI Guidelines stipulate that:

Section 45(1) provides that a document is an exempt document if its disclosure would found an action by a person (other than an agency or the Commonwealth) for breach of confidence. In other words, the exemption is available where the person who provided the confidential information would be able to bring an action under the general law for breach of confidence to prevent disclosure, or to seek compensation for loss or damage arising from disclosure.

23. Whilst at paragraph 5.186 the FOI Guidelines set out that:

A breach of confidence is the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence. The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.

24. Having reviewed the documents, I consider they fall into the class of documents for which an action for breach of confidentiality would be actionable at common law or in equity, if they were released. The document:

- a. is able to be identified with specificity, and not merely in global terms;
- b. has the necessary quality of confidentiality (and is not common or public knowledge);
- c. was received by Defence in such circumstances as to import an obligation of confidence;
- d. is not authorised to be disclosed; and
- e. is such that an unauthorised use would be to the detriment of the vendor.

25. Defence undertook consultation with relevant third parties in relation to the release of the document. During this consultation process the third party did not waive their right to

confidentiality and objected to the release of the information.

26. The information in the document under review has been both communicated and received by Defence on the basis of a mutual understanding of confidence. Once received, the information in question has been kept in a confidential manner and access has been limited.

Section 47F(1) – public interest conditional exemptions – personal privacy

27. Section 47F(1) of the FOI Act provides that:

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).

28. Paragraph 6.119 provides that:

This conditional exemption is intended to protect the personal privacy of individuals.

29. The document which forms the subject of this internal review contains information about named individuals.

30. The main requirements of conditional exemption are that the material is personal information, disclosure would be unreasonable, and it would be contrary to the public interest to release the material at the time of the decision (section 11A(5) of the FOI Act).

Personal information

31. The FOI Act shares the same definition of personal information as the *Privacy Act 1988* (Cth) (Privacy Act) (section 4(1) of the FOI Act). Section 6(1) of the Privacy Act provides:

'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.

32. Paragraph 6.125 of the Guidelines relevantly provide:

Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

33. The contract contains the full names, signatures, and other information about named individuals including Defence staff.

34. I am satisfied that the information meets the definition of personal information for the purposes of section 47F(1) of the FOI Act.

Whether disclosure would be unreasonable

35. Section 47F(2) of the FOI Act provides that in determining whether the disclosure of personal information would be unreasonable, I must have regard to the following matters:

(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) any other matters that the agency or Minister considers relevant.

36. The Guidelines provide at paragraph 6.138 that other relevant factors may include:

- *the nature, age and current relevance of the information*

- *any detriment that disclosure may cause to the person to whom the information relates*
- *any opposition to disclosure expressed or likely to be held by that person*
- *the circumstances of an agency's collection and use of the information*
- *the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act*
- *any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and*
- *whether disclosure of the information might advance the public interest in government transparency and integrity.*

37. The Guidelines further provide at paragraph 6.137 that:

Key factors for determining whether disclosure is unreasonable include:

- (a) the author of the document is identifiable*
- (b) the documents contain third party personal information*
- (c) release of the documents would cause stress on the third party*
- (d) no public purpose would be achieved through release.*

38. The contract contains the name of the vendor. I do not consider disclosure of the name of the vendor to be unreasonable, as this information is already in the public domain, and the scope of the request cites the vendor's name. They are therefore known to be associated with the matters dealt with in the contract. I have also consulted with the vendor and they have not objected to the release of their name.

39. Page 16 contains the name of the individual who signed the contract on behalf of Defence.

40. In relation to the personal information of agency employees, the Guidelines relevantly provide:

6.140 Disclosure that supports effective oversight of government expenditure may not be unreasonable, particularly if the person to whom the personal information relates may have reasonably expected that the information would be open to public scrutiny in future...

6.149 ...There may be cases in which disclosure of individual's names may increase scrutiny, discussion or comment of Government processes or activities. In others, the names of those responsible for the processes or activities may be neither here nor there in their scrutiny.

41. In relation to the remaining personal information, I find that its disclosure would be unreasonable for the following reasons:

- the information is not well known;
- the information is third party personal information;
- the information is not otherwise available from publically accessible resources;
- the applicant will be provided access to the substantive content of the contract;
- in relation to the information on pages 3 and 15, the individuals have objected to disclosure;
- disclosure may cause detriment;
- disclosure will not advance scrutiny of government actions or decisions; and
- no public purpose would be achieved through release.

Whether disclosure would be contrary to the public interest

42. 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.

43. In assessing whether disclosure of the information at this time would, on balance, contrary to the public interest, I am required to consider the factors favouring disclosure as set out in section 11B(3) of the FOI Act:

Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

(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.

44. I recognise that there is a public interest in allowing scrutiny around Defence's purchase of Glenprairie Station, which contributes towards increasing scrutiny of public expenditure.

45. However, the substantive parts of the documents have been disclosed. The exempted material does not add anything to the scrutiny of the decision, as such, I do not consider that disclosure of this information would increase public participation in Defence processes, inform debate on a matter of public importance or promote effective oversight of public expenditure in any meaningful way. Instead, I find that the public interest has been met in disclosure of the substance of the documents.

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Special Advisor – Freedom of Information Review
Associate Secretary Group