



**DEFENCE FOI 111/24/25**

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

1. I refer to the request by [REDACTED] (the applicant), dated and received on 4 August, 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*“I am writing to request access to any documents, Purchase orders, clarifications or additional scope requests texts, or emails that requested the successful proponent, TVN ON Country, to provide any further information clarification that would make an adjustments to their original tendered price, these request could have been made up until the purchase order or award of the contract was executed.”*

**FOI decision maker**

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

**Documents identified**

5. I have identified eleven (11) documents as falling within the scope of the request.
6. The decision in relation to each document is detailed in the schedule of documents.

**Exclusions**

7. Mobile telephone numbers and duplicate documents are excluded from this request. Defence has only considered final versions of documents.

**Decision**

8. I have decided to:
  - a. partially release ten (10) 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 47F [Public interest conditional exemptions - personal privacy], section 47G [Public interest conditional exemptions – business], section 47E(c) [Public interest conditional exemptions – certain operations of agencies] and section

47E(d) [Public interest conditional exemptions – certain operations of agencies] of the FOI Act;

- b. refuse access to one (1) document on the grounds that the document is considered exempt under sections 47E(d) [Public interest conditional exemptions – certain operations of agencies] and 47G [Public interest conditional exemptions – business] of the FOI Act; and
- c. remove irrelevant material in accordance with section 22 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. responses received from consultation with third parties.

### **REASONS FOR DECISION**

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

10. 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.
11. The documents identified in the schedule of documents as being released in part contain exempt and irrelevant material such as mobile telephone numbers that do not relate to the request.
12. Where whole pages are considered to be exempt in full or irrelevant to the scope of the request, these pages have been removed from the released document pack.
13. 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.
14. Where a decision maker denies access to a document, section 22(1) of the FOI Act requires that they consider releasing the document with exempt matter deleted, if possible.
15. Paragraph 3.98 of the Guidelines provides that:

*...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.*

16. In the case of the document identified in the schedule of documents as being refused in full, I have decided to refuse access to the document as it would be meaningless and of little or no value once the exempt material is removed.

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

17. Section 47E(c) 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:*

*(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency*

18. The Guidelines provide, at paragraph 6.102, that:

*Where the document relates to the agency's policies and practices in relation to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely, that:*

- an effect would reasonably be expected following disclosure*
- the expected effect would be both substantial and adverse.*

19. The document contains the names and contact details of Defence personnel. The names and contact details of Defence personnel within the document are not publicly available and disclosure of these could reasonably be expected to have an adverse effect on the health and wellbeing of these individuals.
20. I am satisfied that were the contact details 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 have determined that the management of staff and the discharge of Defence's legal responsibility to ensure the health and safety of its staff may be substantially and adversely affected if names and contact details of Defence personnel and public servants were disclosed. All agencies must take all reasonable steps to minimise the risk of harm to staff to be compliant with their statutory obligations under section 19 of the Work Health and Safety Act 2011.
21. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(c) of the FOI Act.

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

22. 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.*

23. The Guidelines, at paragraph 6.115, provide that:

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

24. The documents identified contain information relating to a contract and tender process, that if released could affect the probity of Defence's tender evaluation and implementation procedures in the future. If Defence were to disclose the information and processes surrounding the tender and project considerations, decisions, discussions, variations and the approach to these matters it would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.
25. The Guidelines provide, at paragraph 6.112, 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.' 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.
26. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

#### **Section 47F – Public interest conditional exemptions - personal privacy**

27. 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).*

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

*6.123 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.*

29. I found that the documents contain personal information of other persons. This includes their names, email addresses and contact numbers which would reasonably identify third parties
30. 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.

31. 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.
32. Accordingly, I am satisfied that the information within the documents is conditionally exempt under section 47F of the FOI Act.

### **Section 47G – Public interest conditional exemptions – business**

33. 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.*

34. 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.
35. The Guidelines explain, at paragraph 6.185:

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

36. The Guidelines also state, at paragraph 6.181:

*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)).*

37. The Guidelines go on to provide, at paragraph 6.191, ‘[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’.

38. The documents contain sensitive information about the business affairs of third parties. Disclosure of this information would, or could reasonably be expected to, unreasonably affect the third party's business affairs by providing a competitive advantage to competitors. The information could be used by competitors to assess the third party's services provided which would, in turn, undermine the third party's future ability to secure contracts. This position has been supported by the third party through consultation.
39. Accordingly, I am satisfied that the information within the documents is conditionally exempt under section 47G (1)(a) of the FOI Act.

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

40. 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.*

41. 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.*

42. 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).

43. 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;
- the interests of an individual or a group of individuals;
- the personnel management function of an agency.
- an agency's ability to obtain confidential information;
- an agency's ability to obtain similar information in the future.

44. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However,

disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

45. There is a strong public interest in not releasing information that would or could unreasonably affect a business. Given Defence's strong links with industry, it is imperative that Defence be able collect and retain sensitive commercial information without fear that the material would be released without authorisation.
46. It is also 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 names, email addresses and phone numbers 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.
47. 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.
48. 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(c), 47E (d), 47F and 47G of the FOI Act.

#### **FURTHER INFORMATION**

49. 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.



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