



**Australian Government**

**Defence**

**DEFENCE FOI 983/23/24**

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

1. I refer to the request by [REDACTED] (the applicant), dated and received on 13 June 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*Pursuant to the Freedom of Information Act (Cth) I request a copy of emails, memoranda, summaries, advice, talking points, export data sent to and/or from the Australian Border Force to the Department from 1 November 2023 to date [13 June 2024] relating to exports to Israel.*

**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 identified nine (9) documents as falling within the scope of the request.

**Exclusions**

5. Duplicates of documents that fall within the scope of the FOI request are excluded from this request. Defence has only considered final versions of documents.

**Revised Decision**

6. I have decided to:
  - a. partially release 9 documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted on the grounds that the deleted material is considered exempt under section 47E [public interest conditional exemption – certain operations of agencies] of the FOI Act; and
  - b. remove irrelevant material in accordance with section 22 of the FOI Act.

**Material taken into account**

7. 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 following consultation with external agencies.

## **REASONS FOR DECISION**

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

- 8. 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.
- 9. The documents to be released in part contain exempt and irrelevant material such as duplicate material that do not relate to the scope of the request.
- 10. 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.
- 11. 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.**

- 12. 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.*

- 13. 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.*

- 14. Upon examination of the documents, I identified names and contact details of Defence and other agency personnel, as well as information that is associated with the business processes of Defence, which would not be widely known within the public domain. In order to determine if the disclosure would, or could reasonably be expected to have a substantial, adverse effect on the proper and efficient conduct of the operations of Defence, I have considered the functions of the relevant Groups, Services and other agencies.
- 15. I consider that the relevant information would, or could reasonably be expected to release information about the internal workings and processes of these areas. This would, or could reasonably be expected to cause damage the operational efficiencies of Defence by negatively impacting the integrity of the system by which Defence

undertakes its operations. This includes those as the Commonwealth regulator for the export of controlled goods and technology.

16. Further, I consider that disclosing information used by Defence to perform its regulatory functions regarding the administration of Australia's defence export control laws, would, or could reasonably be expected to negatively impact such functions. I am satisfied of a reasonable expectation that disclosing such information would require the creation of additional or new processes, including with partner enforcement agencies. I am of the view that disclosure could expose information that entities with hostile intentions could use to exploit Australia's export control laws, prejudicing Australia's defence, security and/or international relations.
17. In addition, I am satisfied that were the names and contact details of Defence personnel made publicly available, it would, or could reasonably be expected to, have substantial adverse effects on the proper and efficient operation of existing public communication channels of Defence as 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.
18. 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.' Given the nature of the information, 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.
19. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

**Public interest considerations - section 47E**

20. 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.*


21. 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;*

22. 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).
23. 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 interests of an individual or a group of individuals;
  - an agency's ability to obtain confidential information;
  - an agency's ability to obtain similar information in the future;
  - the management and personnel management function of an agency.
24. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. The release of the names, email addresses and phone numbers of Defence personnel can reasonably be expected to prejudice the 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.
25. While I accept there is a public interest in ensuring that Defence undertakes its functions in transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of the materiel contained in the documents, particularly those that refer Defence's internal processes which allow Defence to undertake its operational activities in an expected and lawful manner. Additionally, I am of the view that it would be contrary to the public interest to disclose the personal information of a third party and cause unnecessary distress to them.
26. 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.
27. 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 section 47E of the FOI Act.



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Strategy, Policy and Industry  
Department of Defence

13 DEC 2024