



DEFENCE FOI 314/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

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

Correspondence between the secretary of the department and the National Anti-Corruption Commission since 1 January 2024 [to 24 October 2024].

Background



FOI 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 documents as falling within the scope of the request.

Exclusions

8. Mobile telephone numbers and signatures contained in the documents that fall within the scope of the FOI request, duplicates of documents are excluded from this request. Defence has only considered final versions of documents.

Decision

9. I have decided to:

- a. partially release 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 47E [Public interest conditional exemptions-certain operations of agencies] of the FOI Act; and
- b. refuse documents on the grounds that the documents are considered exempt under section 37 [Documents affecting enforcement of law and protection of public safety] of the FOI Act; and
- c. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

10. In making my decision, I have had regard to:
- a. the terms of the request;
 - b. the content of the identified document 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).
 - e. advice received through a consultation process.

REASONS FOR DECISION

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

11. 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.
12. The documents identified as being released in part contain exempt and irrelevant material such as mobile telephone numbers that do not relate to the request.
13. 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.
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 37 – Documents affecting enforcement of law and protection of public safety

15. Section 37 of the FOI Act states:

(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- a. *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;*

- b. *disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or*
- c. *endanger the life or physical safety of any person.*

16. Paragraph 5.95 of the Guidelines outlines that the exemption applies where release of the documents could:

- *prejudice the conduct of an investigation of a breach, or possible breach, of the law;*
- *prejudice the enforcement, or the proper administration, of the law in a particular instance;*
- *disclose lawful methods or procedures for investigating, preventing, detecting or dealing with breaches of the law where disclosure of those methods would be reasonable likely to reduce their effectiveness.*

17. Upon examination of documents within the scope of this request, I have identified that the information relates to the investigation of a breach of law. Section 37(1)(a) applies to documents only where there is a current or pending investigation and release of the document would, or could reasonably be expected to, prejudice the conduct of that investigation.

18. I have also identified that the information contained within the documents is of a confidential nature. Section 37(1)(b) is intended to protect the identity of a confidential source of information connected with the administration or the enforcement of the law. The Guidelines at 5.108 provides the exemption applies where:

- *the information in question may enable the agency responsible for enforcing or administering a law to enforce or administer it properly*
- *the person who supplies that information wishes their identity to be known only to those who need to know it for the purpose of enforcing or administering the law*
- *the information was supplied on the understanding, express or implied, that the source's identity would remain confidential.*

19. I consider the documents to be exempt under section 37 of the FOI Act. Disclosure would or could reasonably be expected to prejudice the investigation of a breach of law and could disclose methods or procedures for investigating and dealing with breaches of the law. Disclosure of these methods would be reasonably likely to reduce their effectiveness.

Section 47E – Public interest conditional exemptions – 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 6.115, 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.

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 and other agency Australian Public Service members made publicly available, it would have substantial adverse effects 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 and staff within the National Anti-Corruption Commission (NACC). Disclosure of names, email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of the agencies.
24. In addition, the documents contain group email addresses that are used by internal Defence and NACC business areas and are not publicly facing. Defence and NACC have established procedures to direct correspondence from members of the public through specific channels to ensure that workflows can be controlled and managed. Releasing these contact details would interfere with the procedures that are in place and would have a substantial adverse effect on the operations of the area, and Defence as a whole.
25. Furthermore, I have identified information that was provided on a confidential basis. If those confidential opinions/analysis were to be made public, it is reasonably expected that the relationship with the stakeholders is likely to deteriorate or at least have an adverse effect on the voluntary exchange of information (outside of coercive notices), important to the NACC's work, if there is an increased risk that information provided in confidence is likely to be made public. If that were to occur, it would negatively impact on the NACC's ability to undertake its statutory functions particularly in relation to corruption prevention. The exemption is supported by the NACC.
26. 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 that the direct contact details and Defence email addresses within the document are not publicly available and that more appropriate communication channels are already available, I am satisfied that release of the information could reasonably be expected to lead to a change in agency processes that would not lead to any efficiencies.
27. Accordingly, I am satisfied that the information contained within the documents are conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations - section 47E(d)

28. 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.

29. 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;

30. In my view, disclosure of this information would not increase public participation in Defence processes (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).

31. 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 management function of an agency;
- an agency's ability to obtain confidential information;
- an agency's ability to obtain similar information in the future; and
- the personnel management function of an agency.

32. 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 names and direct contact details of Defence and NACC personnel can reasonably be expected to prejudice the management and personnel management functions of the agencies. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of staff members should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.

33. 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 material contained in the documents, particularly those that refer to the NACC's ability to obtain confidential information which allow the NACC to undertake its operational activities in an expected and lawful manner.

34. 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.
35. 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(d) of the FOI Act.



Accredited Decision Maker
Department of Defence