



DEFENCE FOI 432/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 29 November 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 seeking the following documents:

- *Performance notices issued to Adecco under its contract CN3923195.*
- *Remediation plans agreed to by Adecco*
- *Correspondence between the Minister and Adecco regarding performance under this contract*

*Timeframe: from date
01/07/2023 - 12:00am*

*Timeframe: to date
29/11/2024 - 12:00am*

2. Further to the above, 'Performance Notice' has been interpreted to mean notices pursuant to performance shortfalls under the contract on the basis that 'Performance Notice' is not a defined term within the contract.

Background

3.

4.

FOI decision maker

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

Documents identified

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

Exclusions

8. Signatures that appear in documents within the scope of the FOI request are excluded from this request. Defence has only considered final versions of documents.

Decision

9. I have decided to:
- a) partially release 5 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 sections 47E [Public interest conditional exemptions – certain operations of agencies], 47F [Public interest conditional exemptions - personal privacy], and 47G [Public interest conditional exemptions – business] of the FOI Act; and
 - b) 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 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).
 - e. advice provided by Defence People Group (DPG); and
 - f. consultation with third parties.

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 in the schedule of documents as being partially released contain exempt and irrelevant material that do not relate to the request.
13. Where whole pages are considered to be exempt in full, 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 47E - Public interest conditional exemptions - certain operations of agencies

15. 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:

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

16. In relation to section 47E(d) of the FOI Act, the Guidelines provide at paragraph 6.115 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.*
17. The Guidelines provide, at paragraph 6.112, that I should consider whether disclosure of the documents '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.'
18. The documents pertain to the technical performance of Adecco and their operational implications within Defence business. They include detailed assessments of Adecco's performance, evaluations of efficiency, commercial information for treatment of performance issues, and other performance metrics integral to the ongoing monitoring and management of the service relationship. These documents contain sensitive and proprietary information about Adecco's operations, including process and contractual, which are essential to ensuring the delivery of services to Defence.
19. Disclosure of the documents would likely have a substantial adverse effect on the operations of Defence, and the interactions Defence has with Adecco. If performance and remediation information were made public, it could:
- a) damage the commercial position of Adecco as sensitive performance information could be exploited by competitors, damaging the suppliers market position and integrity of their offering;
 - b) disrupt Defence operational stability by jeopardising the strategic relationship we maintain with Adecco who may become reluctant to share sensitive operational data in the future, which would undermine the transparency needed to effectively manage and resolve operational issues;
 - c) affect future supplier negotiations and possibly skew the market or lead to unfounded criticism based on incomplete or out-of-context information.
20. The ongoing relationship with Adecco is based on mutual trust and the protection of commercially sensitive information. The release of these documents would severely damage this trust and could result in Adecco becoming unwilling to continue providing services under the same terms. This would disrupt Defence operations and could potentially lead to the need to seek alternative suppliers, creating further operational instability and increasing costs.
21. Given that disclosure of information relating to the technical performance of Adecco's systems and processes would, or could reasonably be expected to, damage the relationship between Adecco and Defence, and affect the transparency of future reports, 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. 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

22. 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).

23. 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.

24. I found that the documents contain personal information including names and contact details of third parties other than the applicant.

25. 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.

26. I am satisfied there is a reasonable expectation that the details of personnel contained in the documents is not widely known and could be used inappropriately, in a manner which could adversely affect the health, wellbeing and work of those personnel.

27. Accordingly, I am satisfied that the information are conditionally exempt under section 47F of the FOI Act.

Section 47G – Public interest conditional exemptions – business

28. 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.

29. 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.

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

31. 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)).

32. The Guidelines go on to provide, at paragraph 6.191, ‘the 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’.

33. I have considered the impact on Adecco’s business of full release of the information contained in the documents, and consider that release of certain information could affect Adecco’s ability to conduct its business by making public technical and operational information of interest to its competitors.

34. Moreover, I have also determined there to be a risk to the future supply of information to the Commonwealth if certain elements of the documents are released, due to the potential of reduced transparency of information contained in reporting. Additionally, there is a risk of adverse impact to the organisation’s reputation potentially reducing their cliental; which in turn will directly impact the organisation’s ‘money making affairs’ and provide an advantage to their competitors.

35. Additionally, the disclosure of this information could substantially and adversely affect the ongoing relationship between Defence and Adecco which would, or could reasonably be expected to, prejudice the future supply of information to the Commonwealth. Defence requires frank and open supply of information to conduct, manage and perform its functions. The ongoing relationship with Adecco is based on mutual trust and the protection of commercially sensitive information. The release of certain material would severely damage this trust and could result in Adecco becoming unwilling to continue providing its services to Defence under the same terms. This would disrupt Defence operations and could potentially lead to the need to seek alternative suppliers, creating further operational instability and increasing costs.

36. Accordingly, I am satisfied that the information is conditionally exempt under section 47G(1)(a) of the FOI Act.

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

37. 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.

38. 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;

39. 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).

40. 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:

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

41. I have considered that release would result in a substantial adverse effect on the conduct of the affairs of Adecco, including its operations, commercial interests, financial stability, supplier relationships, and strategic planning as the documents contain sensitive information about Adecco's commercial arrangement, financial assessment and performance.

42. Despite the public interest factors that weigh in favour of disclosure, I find that disclosure of the information may result in Adecco being unfairly criticised, damaging its reputation and affecting Defence's future contractual negotiations or ability to retain them as a supplier. This could disrupt service delivery, increase operational costs, and force Defence into costly renegotiations or a search for an alternative supplier.

43. I have considered that disclosure of the information would, or could reasonably be expected to, be an unreasonable disclosure of business information. I consider there is a public interest in avoiding an unreasonable adverse effect on Adecco from the

disclosure of business information, where that disclosure serves limited benefit in informing public scrutiny of government decision-making.

44. I have also considered Defence's ongoing relationship with Adecco and the reasonable protection of commercially sensitive information. The release of these documents would severely damage trust between Defence and Adecco and could result in Adecco becoming unwilling to continue providing the service under the same terms. This would disrupt Defence operations and could potentially lead to the need to seek alternative suppliers, creating further operational instability and increasing costs. While there is a general public interest in transparency and accountability, this must be weighed against the significant and disproportionate harm that would result from the disclosure of information. In this instance, I believe the public interest in access to these documents is outweighed by the potential harm to Adecco operations, its commercial relationships, and its ability to effectively compete in the market.
45. 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.
46. 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, 47F and 47G of the FOI Act.



Digitally signed by [redacted]
Date: 2025.02.27 18:09:09
+11'00'

Accredited Decision Maker
Defence People Group
Department of Defence