



DEFENCE FOI 197/22/23 - STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application submitted on 12 October 2022 by BE (the applicant) under the *Freedom of Information Act 1982* (FOI Act) for access to:

...a copy of the current version of each of the following documents. If there is no current version, I seek access to the final version of the QTB/Hot Issue Brief.

Documents 0, 1, 3, 11, 14, 17, 18, 20.

Background

2. The document titles referenced by document numbers are outlined below:

0. *LAND 400 Phase 3 - Land Combat Vehicle Systems (Infantry Fighting Vehicle)*
1. *Australia's Future Submarine Capability*
3. *Defence Strategic Review including Defence Industry Development Strategy*
11. *Defence Spending, Delivery and Projects of Concern*
14. *Bolster Defence's Naval Power (including Shipbuilding, Hunter Class Frigates and Attack Class contract settlement)*
17. *Status of LAND projects in pipeline/pre-decisional*
18. *Port of Darwin review*
20. *Review of ADF Recruitment and Retention*

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 have identified eight (8) documents as matching the description of the request.

Exclusions

5. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Decision

6. I have decided to partially release eight (8) 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 47C [public interest conditional exemptions - deliberative processes] and 47E(d) [public interest conditional exemptions - operations of an agency] of the FOI Act.

Material taken into account

7. In making my decision, I had regard to:

- a. the terms of the request
- b. the content of the identified documents in issue
- c. relevant provisions in 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 sought from subject matter experts within Defence.

Reasons for decision

Section 47C – Public interest conditional exemptions – Deliberative Processes

8. Section 47C of the FOI Act states:

(1) A document is conditionally exempt if its disclosure under the Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative process involved in the functions of...an agency...or a Minister.

9. I considered the question of whether the information is purely factual. In relation to section 47C considerations under the FOI Act, I have taken into account the Guidelines at 6.66 which clarifies ‘purely factual material’ that would not be regarded as deliberative matter would include:

- a. content that is merely descriptive;
- b. incidental administrative content;
- c. procedural or day to day content;
- d. the decision of conclusion reached at the end of the deliberative process;
- e. matter that was not obtained, prepared or recorded in the course of, or for the purpose of, a deliberative process.

10. I have also taken into account further detail in the Guidelines (6.73) that advise “*‘purely factual material’ does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it’.*”

11. The redacted material is communicating deliberative matter for the preparation of Parliament and is not factual information. There is a risk, release of the deliberative matter would harm the smooth operation of Defence business including the ability for Defence to present and communicate frank preliminary advice at the highest levels to the Government.

12. Taking the above into consideration, I am satisfied that the material contained in one brief is conditionally exempt under section 47C of the FOI Act.

13. Section 11A(5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed unless, in the circumstances access to the document at that time would, on balance, be contrary to the public interest. My public interest considerations are detailed below.

Section 47E - Public interest conditional exemptions – certain operations of agencies

14. 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 an agency.

15. In relation to subsection 47E(d) of the FOI Act, paragraph 6.123 of the Guidelines states:

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

16. Upon examination of the documents, I identified information of individuals' details including their name and contact information. I considered that the material could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Defence.

17. The names of the individuals, as well as direct contact information in the document including phone numbers, have not been released. It is submitted that the release of this specified information, which is not publicly available, would create opportunity for third parties to ascertain commercially valuable information through an improper communication channel. Defence has dedicated avenues of communication for interfacing with the public which are best supported for contact in these instances.

18. It is further submitted that the release of this information could be reasonably expected to affect the ability of the individual to undertake their role. The release of staff names could see those individuals targeted as their roles in Defence are not widely known and could attract attention through publication.

19. In conclusion, I am satisfied that parts of the documents are conditionally exempt under section 47E(d) of the FOI Act.

20. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are detailed below

Sections 47C and 47E - Public interest considerations

21. I have found that the identified material conditionally exempt under sections 47C and 47E of the FOI Act.

22. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of relevant factors that favour access to a document set out in section 11B(3) [Public interest exemptions – factors] of the FOI Act. While disclosure may promote some of the objects of the FOI Act, I do not consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities.

23. In coming to my decision, I have had regard to the Guidelines, specifically paragraph 6.22 in relation to public interest factors against disclosure and found that the identified material, if released:

- a. could reasonably be expected to prejudice an agency's ability to obtain confidential information;
- b. could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;

- c. could reasonably be expected to prejudice the management function of an agency.

24. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

25. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure and the information exempt under sections 47C and 47E of the FOI Act.

Kathryn Burke
A/g Director
Freedom of Information
Associate Secretary Group