



**Australian Government**  
**Department of Defence**

BN9037852

**FOI 027/19/20 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

*“The Department of Defence’s Capability Acquisition and Sustainment Quarterly Performance Report for the quarterly period to March 2019.”*

**FOI decision maker**

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

**Documents identified**

3. I identified one document as matching the description of the request.

**Decision**

4. I have decided to partially release the document 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 subsection 33(a)(i) and (iii) [Documents affecting national security or international relations], section 47E [public interest conditional exemptions-certain operations of agencies] and section 47G [public interest conditional exemptions-business affairs] of the FOI Act.

**Material taken into account**

5. 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 FOI Guidelines); and
  - e. advice received from officers within the department from Capability Acquisition and Sustainment Group.

**Reasons for decision**

**Section 33 – Documents affecting national security, defence or international relations**

6. Subsection 33(a)(i) of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

7. Subsection 33(a)(iii) of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

8. In regards to the terms ‘could reasonably be expected to’ and ‘damage’, the Guidelines provide:

*5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.*

*5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.*

*5.28 ‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage is likely to result from disclosure of the document(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments. A dispute between individuals may have sufficient ramifications to affect relations between governments. It is not a necessary consequence in all cases but a matter of degree to be determined on the facts of each particular case.*

9. Upon examination of the document, I identified material that, upon release, could reasonably be expected to cause damage to the security of the Commonwealth by making public information about current and anticipated military capability levels arising from the performance of ongoing sustainment and acquisition activities.

10. I further identified material in the document that, upon release, could reasonably be expected to cause damage to the international relations of the Commonwealth by making public information which may diminish the confidence other countries may have that Australian agencies are able to keep certain information confidential.

11. In light of the above, I have decided that the specified material identified is exempt pursuant to section 33 of the FOI Act.

#### **Section 47E – Certain operations of agencies**

12. Section 47E of the FOI Act provides that a document is conditionally exempt from disclosure requirements ‘if its disclosure under the Act would, or could reasonably be expected to, do any of the following: prejudice the effectiveness of procedures or methods for the conduct of test, examinations or audits by an agency and, in particular have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.’

13. I found that the document identified contains statements of the intended course of action the agency proposes to undertake, and that these statements are relevant to ongoing capability management activity, including contractual arrangements. The disclosure of these statements could reasonably be expected to prejudice the agency’s ability to properly conduct its commercial and contracting activities.

14. Taking the above into consideration, I have decided that the specified material identified is conditionally exempt under subsection 47E of the FOI Act.

#### **Section 47G – Business affairs**

15. Where access has been denied to information under section 47G of the FOI Act, I considered that the material could reasonably be expected to unreasonably affect that organisation or undertaking in respect of their lawful business, commercial or financial affairs.

16. Section 47G 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; or*

*(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

17. Upon examination of the documents, I identified information concerning the performance of companies contracting to Defence, which is not publicly available. This information is pertinent to current and ongoing contractual performance management activity. Disclosure of this information could reasonably be expected to adversely affect these companies by providing their competitors with information on Defence's assessment of the companies' performance and capability.

18. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G of the FOI Act.

#### **Section 47E and Section 47G - Public interest considerations**

19. Subsection 11A(5) of the FOI Act requires an agency to allow access to a conditionally exempt document unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest.

20. In determining whether to release the conditionally exempt material, I considered the FOI Guidelines, together with a range of factors that favour access to a document set out in subsection 11B(3) [public interest exemptions-factors favouring access] of the FOI Act. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to the public interest. Specifically I considered whether disclosure of the documents would:

- a) promote the objects of the FOI Act;
- b) inform debate on a matter of public importance;
- c) promote effective oversight of public expenditure; or
- d) allow a person to access his or her own personal information.

21. Overall, I note that the disclosure promotes some objects of the FOI Act and may generate public debate on Defence acquisition and sustainment activities. However, I believe the disclosure of the exempt information would not allow a person to access his or her own personal information, nor would it properly inform public debate on these matters. This is because the document is intended for internal Defence stakeholders who have extensive technical and background knowledge. Public release of the exempt document without all the necessary background knowledge may in fact mislead public debate on these activities.

22. Paragraph 6.22 of the FOI Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that the

release of this information could reasonably be expected to prejudice the conduct of an agency's operations and the ability of companies to conduct their lawful business.

23. On balance, I consider the benefit to the public from disclosure is outweighed by the benefit to the public from withholding the information. In particular, I consider the release of company performance assessments, potential risk areas and remediation strategies for the specific activities could reasonably be expected to prejudice the ability of the agency and the companies to undertake their operations. I consider that the public interest is better served in this case by maintaining the confidentiality of this information.

24. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and the information should be exempt under sections 47E and 47G of the FOI Act.

25. None of the factors listed in subsection 11B(4) of the FOI Act were taken into account when making my decision.

### **Further Information**

26. The document matching the scope of this request was classified and contained a dissemination limiting marker. I have declassified the version of the document that is approved for release, and have struck through the dissemination limiting marker.

27. It is also noted that Defence will be providing a private briefing on the June 2019 Capability Acquisition and Sustainment Quarterly Performance Report to the Senate Standing Committees on Foreign Affairs, Defence and Trade in October 2019.

**ChrisHorscroft** Digitally signed by ChrisHorscroft  
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Chris Horscroft  
Accredited Decision Maker  
Capability Acquisition and Sustainment Group