



Australian Government
Department of Defence

Reference: BI5906265

FOI 028/19/20 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:

“Defence's Incoming Government Brief states that one of the Royal Australian Navy's top three priorities is "workforce retention and growth to provide the right people, at the right place, at the right time, with the right training, capable of sustainably operating our future force".

I seek access to:

(1) Any plans/proposals/models that Defence relate to addressing this priority, including but not limited to the Defence Strategic Workforce Plan 2016-26 and the ADF Total Workforce Model, as well as any other current workforce plan/proposals/models specific to the Navy workforce;

(2) Reports or other documents provided to the Secretary of the Department of Defence, the Chief of the Defence Force and/or the Chief of the Navy since 1 January 2018, that record progress in the implementation of Defence workforce proposals or models as they apply to the Navy workforce.”

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 26 documents as matching the description of the request.

4. The decision in relation to each document is detailed in a schedule of documents.

5. I have added an FOI reference number and serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

- a. release eight documents in full;
- b. partially release 17 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 33 [Documents affecting national security, defence or international relations], 47 [Documents disclosing trade secrets or commercially valuable information], 47C [Public interest conditional exemptions-deliberative processes], 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;

- c. deny access to one document under section 47C [public interest conditional exemptions-deliberative processes]; and
- d. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) 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); and
 - e. consultation with third parties; and
 - f. consultation with Navy Headquarters, Navy Personnel, Future Navy Personnel, Capability Acquisition and Sustainment Group and Defence People Group.

Reasons for decision

Section 33 – Defence of the Commonwealth

8. Section 33(a)(ii) of the FOI Act exempts material from release if its disclosure would or could reasonably be expected to, cause damage to the defence of the Commonwealth.
9. In regards to the term, ‘could reasonably be expected to’, the Guidelines specify:
- 5.16 the test requires the decision maker to assess the likelihood of the predicated or forecast event, effect or damage occurring after disclosure of a document.*
10. While the FOI Act does not define ‘defence of the Commonwealth’, previous Administrative Appeals Tribunal decisions indicate the term includes protecting the Defence Force from hindrance or activities which could prejudice its effectiveness.
11. Some of the documents in scope of the request contain information on the planning and management of the naval workforce – a fundamental input for a sensitive Defence capability. Disclosure of this information could give insight into the Commonwealth’s ability to manage and apply that capability, such disclosure could reasonably be expected to cause damage to the defence of the Commonwealth by providing adversaries with a military advantage.
12. In evaluating the potential harmful effects of disclosing the information, I have taken into account the ‘mosaic theory’, which refers to individual pieces of information that may not be harmful in isolation, but may cause damage to the defence of the Commonwealth when combined with other publicly available information and material released in the document.
13. I have therefore determined that the material is exempt under section 33(a)(ii) of the FOI Act.

Section 47 – Documents disclosing trade secrets or commercially valuable information

14. Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure under the FOI Act would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
15. I found information in the document having commercial value to the authors of the report. Releasing the information could reasonably be expected to adversely affect the

author's competitive advantage in the consultancy market by disclosing the review methodology to their competitors.

16. I have therefore determined that the information is exempt under section 47(1)(b) of the FOI Act.

Section 47C – Deliberative processes

17. Section 47C of the FOI Act conditionally exempts documents containing:

... deliberative matter that is in the nature of an opinion, advice or recommendation that has been obtained, prepared or recorded; or, a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or a minister.

18. I have identified deliberative matter – that is, content that is in the nature of, or relating to either opinion, advice or recommendation that has been obtained, prepared or recorded; or a consultation or deliberation that has taken place, in the course of, or for the purpose of, a deliberative process of the department.

19. The document at Item 1 Serial 12 and the document to which access has been denied in full are an interim and draft report that contain opinions, advice, recommendations and supporting material that was gathered through consultation. Defence is still in the process of considering the reports, and has made no decision on their recommendations. Consequently, I find the documents contain deliberative matters and are conditionally exempt under section 47C(1) of the FOI Act.

20. Section 11A(5) 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.

21. My public interest considerations are detailed below.

Section 47E – Certain operations of agencies

22. Upon examination of the documents, I identified sensitive personnel data that would divulge capabilities that could have an adverse effect on the proper and efficient conduct of Defence operations.

23. 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.

24. Where access has been denied to information under section 47E(d) of the FOI Act, 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.

25. As noted above, use of the word 'could' in this provision requires no more than a degree of reasonableness being applied in deciding whether disclosure would cause the consequences specified. The reasonable expectation refers to material regarding details of specific data relating to personnel capabilities within the Navy.

26. I am satisfied that the expected effect of disclosing to the applicant material identified exempt under section 47E(d) could have a substantial adverse effect on the proper and efficient conduct of the operations of Defence; in that once the information was made

publically available it could divulge areas of Navy capability. I have decided that the specified material identified in the documents is conditionally exempt pursuant to section 47E(d).

Section 47F - Personal privacy

27. Upon examination of the documents, I identified information, specifically pictures of Defence personnel and the name and addresses of third parties other than the applicant. As a person's identity could be apparent or reasonably ascertainable from the identified information, I have decided that it constitutes personal information.

28. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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 documents;
- 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 individual.

29. Against the criteria, I found:

- a. the specific personal information listed is not well known;
- b. the individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt in the documents; and
- c. the information is not readily available from publicly accessible sources.

30. The release of personal information of individuals could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of information of third parties, other than the applicant, would be an unreasonable disclosure of personal information and is conditionally exempt under section 47F(1) of the FOI Act.

Section 47G – Business

31. Section 47G of the FOI Act states:

A document is conditional exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional 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; ...

32. Upon examination of the documents, I identified they contain the name of a company that was involved in the study into improving retention of Defence personnel which equates to third party business information. I considered consulting with the business to offer them an opportunity to provide a submission on the release of their information. However, I also considered the nature of the request and believe the removal of the identified business information would not significantly detract from the value or meaning of the document being sought by the applicant.

33. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that the effect of disclosing the identified material could have an adverse effect on the company as disclosure of their information, without their consent, could diminish their business relationship with Defence.

34. Based on the above, I am of the view that release of the company name would be an unreasonable disclosure of their business information and I consider the material conditionally exempt under section 47G of the FOI Act.

Section 47C, 47E, 47F and 47G - Public interest considerations

35. I found that the identified documents are conditionally exempt under sections 47C, 47E, 47F and 47G of the FOI Act.

36. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objectives of the FOI Act, as information held by the government is a national resource.

37. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request is that release of this information could reasonably be expected to prejudice:

- the protection of an individual's right to privacy;
- the interests of an individual or a group of individuals;
- the management function of an agency, specifically its ability to manage its workforce;
- the commercial activities of a business
- the agency's ability to obtain similar information in the future,

38. I considered that the above factors weighed heavily against disclosure at this time. Disclosure of this information would not increase public participation in government processes nor would it, in my view, increase scrutiny or discussion of government activities.

39. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the confidentiality of material contained in the documents while they are still in the deliberative stages. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

40. I consider that there is a strong public interest in preventing an adverse effect on the ability of Defence to both receive and prepare frank advice, the premature release of which could impede the effective completion of the matters under deliberation.

41. I am satisfied that the expected effect of disclosing to the applicant material identified exempt under section 47E(d) could have a substantial adverse effect on the proper and efficient conduct of the operations of Defence; in that once the information was made publically available adversaries could use the data to analyse Navy capabilities in certain operations.

42. Releasing details that would identify individuals, including their personal information, could reasonably be expected to cause harm to their privacy. I consider that the public interest is better served in this case by maintaining the personal privacy of individuals from public disclosure.

43. Releasing third party business information would lessen confidence in Defence's ability to protect their information, which could have an adverse effect on Defence's ability to conduct and manage working relationships with its contractors in the future.

44. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47C, 47E, 47F and 47G of the FOI Act.

45. Whilst I have decided some material is conditionally exempt I firmly believe that the material I have decided to release will increase public participation in the Defence process and will support the objectives of the FOI Act.

Third party consultation

46. I decided to consult with third parties regarding their information which was contained in the documents. In response to this consultation, some of the third parties have objected to the release of their personal information. I agree with their objections.

Further Information

47. The documents released as part of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

Charles Stephenson

CRL Stephenson

Captain, Royal Australian Navy
Accredited Decision Maker
Navy Group

17 September 2019