



Reference: AHQ/OUT/2020/BQ11707342

FOI 265/19/20 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 most significant document/s in the last 6 months regarding the progress of Land 2110 Phase 1B facilities program. Including information about storage facilities and contents and proposed contents of the facilities at the 14 Defence sites.

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 to or from the applicant are excluded from this request.

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 six documents, totalling 197 pages, as matching the scope of this 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 Document number to each of the documents which correspond with the schedule.

Decision

6. I have decided to:

- a. partially release six 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 or defence of the Commonwealth], 47D [public interest conditional exemptions – financial or property interests of the Commonwealth], 47E(d) [public interest conditional exemptions – effective and efficient operations of an agency], 47F [public interest conditional exemptions – personal privacy] and 47G [public interest conditional exemptions – business] of the FOI Act
- b. 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)
 - e. consultation with a third party
 - f. advice provided by Capability Acquisition and Sustainment Group, Estate & Infrastructure Group and Systems and Integration Branch, Army Headquarters.

Reasons for decision

Exemption claim – Section 33(a)(ii) – damage to the defence of the Commonwealth

8. Section 33(a)(ii) exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the defence of the Commonwealth.
9. I find that disclosure of some information in the documents exempted under section 33(a)(ii) would cause, or could reasonably be expected to cause, damage to the defence of the Commonwealth. Defence of the Commonwealth is not defined in the Act, but has been held to include deterring and preventing foreign incursions into Australian territory and protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.
10. The documents contain specific information about the type of Chemical Biological Radiological and Nuclear Defence capability that will be used for training of Australian Defence Force members. Releasing this information would divulge specifics of capabilities which would impact on the defence of the Commonwealth. If released, this information could reasonably provide an adversary with a tactical advantage thereby diminishing the capability of the Australian Defence Force to defend the Commonwealth.
11. I find that disclosure of the documents would, or could reasonably be expected to, cause damage to the defence of the Commonwealth. Therefore information within the documents is exempt under section 33(a)(ii) of the FOI Act.

Exemption Claim – Section 47D – financial or property interests of the Commonwealth

12. Upon examination, I found that the documents contain information that relates to sensitive financial considerations and I have determined that the material redacted and marked as exempt under section 47D is exempt pursuant to section 47D of the FOI Act. Section 47D states that:

A document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

13. The FOI Guidelines at paragraph 6.92 state that:

A substantial adverse effect may be indirect. For example, where disclosure of documents would provide the criteria by which an agency is to assess tenders, the agency's financial interest in seeking to obtain best value for money through a competitive tendering process may be compromised.

14. In considering the information redacted and marked as exempt pursuant to section 47D of the FOI Act, I found that the material is information that would or could jeopardise Defence's position in managing a particular project and result in the Commonwealth not being able to achieve the best value for money in its commercial dealings. Therefore, I consider the material to be conditionally exempt under section 47D of the FOI Act, as release would cause a substantial adverse effect on the financial interests of the Commonwealth.

Exemption Claim – Section 47E(d) – Certain operations of agencies [effective and efficient operations of an agency]

15. In relation to section 47E(d), the Guidelines explain that for this exemption to apply, 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, I found that the documents contain information that relates to the management of a large and significant capability and facilities project and I have determined that the material redacted and marked as exempt under section 47E(d) is exempt pursuant to section 47E(d) of the FOI Act.

17. The Guidelines advise me to consider whether the information could be reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. I do not consider that releasing the information could reasonably be expected to improve Army's complaint resolution processes and personnel management.

18. Taking into account the above factors, I consider that the release of the information concerning the management of the project at this time could adversely affect Defence's management of the project and is conditionally exempt under section 47E(d) of the FOI Act.

Exemption Claim – Section 47F(1) - Personal Privacy

19. Upon examination of the documents, I identified information, specifically names and contact details of individuals other than the applicant.

20. 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 document
- c. the availability of the information from publicly accessible sources
- d. the effect the release of the personal information could reasonably have on the third party.

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

22. The release of the names and contact details of individuals identified in the documents could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of individuals would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

Public interest conditional exemption – Section 47G(1)(a) – Business

23. Upon examination of the documents, I identified business information of a third party. The Guidelines, at para 6.180, advise that under section 47G of the FOI Act, a document is conditionally exempt if it discloses 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 (business information), where the disclosure of the information:

- *would, or could reasonably be expected to, unreasonably affect the 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.*

24. I note that the use of the word ‘could’ in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.

25. 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 contained within the documents within scope of this request would have an adverse effect on the professional, commercial and financial affairs of a third party.

26. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G(1)(a) of the FOI Act.

Public interest considerations – Sections 47D, 47E(d), 47F(1) and 47G

27. I have found that the identified documents are conditionally exempt under sections 47D, 47E(d), 47F(1) and 47G of the FOI Act. 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’.

28. 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 objects of the FOI Act, as information held by the Government is a national resource.

29. However, disclosure of this information would not increase public participation in the Defence process with a view to promoting better-informed Defence processes (section 3(2)(a) of the FOI Act), nor would it increase scrutiny and review of Defence activities (section 3(2)(b) of the FOI Act).

30. 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 are that release of this information could reasonably be expected to prejudice:

- a. the protection of an individual's right to privacy
- b. the competitive commercial activities of an agency.

31. The release of the identified business information is likely to harm the commercial interests of the identified third parties. If Defence were to release this type of information it would lessen confidence in Defence's ability to protect information and restrict the future flow of such information. If the information was made public it could reasonably cause an adverse effect on Defence's ability to conduct and manage working relationships with contractors in the future.

32. 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 47D, 47E(d), 47F(1) and 47G of the FOI Act.

33. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

Further information

34. The facilities constructed as part of Land 2110 Phase 1B will accommodate 20-foot International Standards Organisation storage containers. These storage containers will contain Chemical Biological Radiological and Nuclear Defence equipment to enhance the protection of Australian Defence Force personnel against exposure to toxic industrial materials and weaponised CBRN threats. In order to provide the necessary layered force-protection capability, this equipment includes 33 separate sub-systems grouped under the following five CBRN Defence capability pillars:

- a. Detection, Identification and Monitoring systems comprising graduated capabilities to detect, sample and identify hazards.
- b. Warning and Reporting systems comprising capabilities to predict and communicate the location and movement of Chemical Biological Radiological and Nuclear hazards, monitor weather conditions and facilitate the compilation of reports for distribution to Force Elements using the Battle Management System.
- c. Physical Protection systems comprising capabilities to protect personnel from Chemical Biological Radiological and Nuclear hazards through individual protective equipment (respirators and protective ensembles) and collective protection capabilities.
- d. Hazard Management systems comprising capabilities to decontaminate personnel, equipment and the environment.

- e. Medical Support systems comprising sub-systems to assist in the movement and treatment of Chemical Biological Radiological and Nuclear casualties.

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Accredited Decision Maker

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