



Australian Government
Department of Defence

Reference: [R34862734]

FOI 444/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by Ms Verity Pane under the *Freedom of Information Act 1982* (FOI Act), for access to:

“... Under FOI I seek copy of any document held by the Freedom of Information Section, of the Enterprise Reform Branch, in the Governance & Reform Division (titles which are antonyms to the actual conduct of the staff in these areas I note) that was created in FY16/17, that relates to any expenditure by that section on training for FOI duties....”

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 11 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 Item/Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:
 - a. release three documents in full;
 - b. partially release two 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 section 47G [public interest conditional exemptions-business] of the FOI Act;
 - c. deny access to 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 47E(d) [public interest conditional exemptions-certain operations of agencies] and section 47G [public interest conditional exemptions-business] of the FOI Act; 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. comments received from a third party following consultation.

Reasons for decision

Section 47E(d) – certain operations of agencies

8. I found that parts of the identified documents contain material in respect of which a claim for exemption under section 47E(d) of the FOI Act may be warranted. Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

9. 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.’

10. 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.

11. Upon examination of the documents, I identified third party information relating to a business. The information, if released, could affect the integrity and efficacy of the Department of Defence’s internal processes and procedures regarding contracts and contractors. If the information was made publically available it could reasonably cause an adverse effect on Defence’s ability to conduct, manage and perform its functions and working relationships with contractors in the future.

12. Taking the above into account, I consider that the identified documents contain information which is conditionally exempt under section 47E(d) of the FOI Act.

13. 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’.

14. My public interest arguments are detailed below.

Section 47G - Business

15. Where access has been denied under section 47G of the FOI Act, I considered that the material would, or could reasonably be expected to have an adverse effect on the businesses who provided training to the agency.

Section 47G of the FOI Act states “*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*
- b. any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.”*

16. Upon examination of the documents I found that they contained information of a commercial value that may be considered exempt. The Guidelines, paragraph 5.202, provide that the information must satisfy two criteria:

- a. *the document must contain information that has a commercial value to an agency or to another person or body*
- b. *the commercial value of this information would, or could reasonably be expected to be, destroyed or diminished if it was disclosed.*

17. I also had regard to the Guidelines, paragraph 5.203, which outlines factors which may assist in deciding in a particular case whether information has commercial value. Factors include:

- a. *whether the information is known only to the agency or person for whom it has value or, if known to others, to what extent that detracts from the intrinsic commercial value*
- b. *whether the information confers a competitive advantage on the agency or person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors*
- c. *whether a genuine ‘arms-length’ buyer would be prepared to pay to obtain that information*
- d. *whether the information is still current or out of date (out of date information may no longer have any value)*
- e. *whether disclosing the information would reduce the value of a business operation or commercial activity – reflected, perhaps, in a lower share price.*

18. I found that the documents contained information relating to business processes, pricing and financial matters of a business providing training services to the agency.

19. I am satisfied that the expected effect of disclosing material identified as exempt under section 47G could have an adverse effect on this business as disclosure of training costings could diminish the competitive nature and affect the profitability of the business operations by releasing this information.

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

Sections 47E(d) and 47G - Public interest considerations

14. I have found that the identified documents are conditionally exempt under sections 47E(d) 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’.

15. 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.

16. However, 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).

17. 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 competitive commercial activities of an agency;
- b. an agency's ability to obtain confidential information; and
- c. an agency's ability to obtain similar information in the future.

18. Releasing the pricing information of the business that provides FOI training to Defence would harm its future profitability and affect Defence's ability to obtain similar information in future. It would equally effect Defence's ability to operate if contracts were not managed with the appropriate care.

19. 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 47G and 47E(d) of the FOI Act.

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

Section 22

21. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to the applicant with deletions, but have decided against this course of action, as the document would be meaningless and of little or no value once the exempt material is removed.

Nicola Viney
Accredited Decision Maker
Associate Secretary Group