



Australian Government
Department of Defence

DEFENCE FOI 446/20/21 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by Bick Rurr (Right-to-Know) under the *Freedom of Information Act 1982* (FOI Act) for access to:

“...all available correspondence including emails, letters and contracts etc. relating to the participation of the 101 Doll Squadron dance troop (FEMALE COLLABORATING DANCEHALL CREW SYDNEY) in the commissioning ceremony of HMAS Supply (A195). The commissioning of the ship occurred on the 10th April 2021.”

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 scope 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 document number to each of the documents, which corresponds with the schedule.

Exclusions

6. 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

7. I have decided to:
 - a. release one document in full;
 - b. partially release ten 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 47E(c) [public interest conditional exemptions-certain operations of agencies], section 47F [public interest conditional exemptions-personal privacy] and 47G [public interest conditional exemptions-business] of the FOI Act; and
 - c. remove irrelevant material in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

8. 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 a third party.

Reasons for decision

Section 22 – Edited copies with exempt or irrelevant matter deleted

9. Section 22 of the FOI Act provides that if an agency or Minister decides:

- (i) to refuse access to an exempt document; or*
- (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access*

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

10. Considering all of the above, I decided that it was reasonably practicable to remove the material that did not fall within scope of this request and release the documents in that form

Section 47E – Certain operations of agencies

11. On review of the documents, I identified information relating to the names, rank and positions held by specific Navy personnel associated with the event management of the commissioning of HMAS *Supply*. I found the material to be conditionally exempt under section 47E(c) of the FOI Act which states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following: ...

- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.*

12. The Australian Information Commissioner has issued Guidelines under section 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. In relation to section 47E(c) of the FOI Act, the Guidelines explain that, where the document relates to the agency's policies and practices concerning the assessment and management of personnel, the decision maker must address whether:

- a. an effect would reasonably be expected following disclosure; and
- b. the expected effect would be both substantial and adverse.

13. For this exemption to apply, the documents must relate to either:

- a. the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; and
- b. the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

14. The names, rank and positions of specific Defence personnel have been redacted from the documents. Whilst personnel names are generally disclosed, the names in this instance

have been exempt due to disparaging and intimidating comments on social media platforms and information received by Navy.

15. In my view, it is reasonably likely that if the individual's identity were released in connection with the content of the documents, they could be subjected to harassment or to a series of inquiries which would detract from their ability to perform their routine business functions.

16. Defence has a responsibility to its personnel with work health and work safety being an important consideration. The release of staff identities in this instance could have a substantial adverse effect on the management of personnel. As the Department has a responsibility to protect its staff, this information has been removed from the documents.

17. Based on my consideration of the above, I am of the view that release of this information would have a substantial adverse effect on the individuals concerned and the management of personnel.

18. Noting all of the above, I have decided that the material is conditionally exempt under section 47E(c) of the FOI Act.

19. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless (in the circumstances) access to the documents at this time would, on balance, be contrary to the public interest. My public interest considerations are set out below.

Section 47F - Personal privacy

20. On review of the documents, I identified information, specifically personal information of third parties other than the applicant, such as names and personal details. I found the material to be conditionally exempt under section 47F of the FOI Act.

21. When assessing whether the disclosure of this 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; and
- d. any other matters that the agency or Minister considers relevant.

22. Against the above criteria I found:

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

23. Taking into account the above factors, I consider that the release of the material would be an unreasonable disclosure of personal information of individuals other than the applicant and could reasonably be expected to cause harm to their privacy. I have therefore decided that this information is conditionally exempt under section 47F of the FOI Act.

24. 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 set out below.

Section 47G – Business affairs

25. Upon examination of the documents, I identified the business and financial affairs of an external contractor, which equates to third party business information. I found the material to be conditionally exempt under section 47G of the FOI Act which 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; ...

26. 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, could diminish their business relationship with Defence.

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

28. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless (in the circumstances) access to the documents at this time would, on balance, be contrary to the public interest. My public interest considerations are set out below.

Public interest considerations – Sections 47E(c), 47F and 47G

29. In assessing whether disclosure is on balance, contrary to the public interest, I considered the Guidelines together with a range of factors set out in section 11B(3) of the FOI Act, which favours access to a document:

(a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);

(b) inform debate on a matter of public importance;

(c) promote effective oversight of public expenditure;

(d) allow a person to access his or her own personal information

30. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

31. While I consider that release of the material removed under sections 47E(c), 47F and 47G may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure. Furthermore, the public interest is better served in protecting the privacy of individuals and their personal information and the business information contained within these documents from release to the public at large.

32. 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 or harm:

- a. the protection of an individual's right to privacy;
- b. the interests of an individual or group of individuals;
- c. an agency's ability to obtain confidential information;
- d. an agency's ability to obtain similar information in the future; and
- e. the management function of an agency.

33. 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 strong public interest in maintaining the confidentiality of material contained in the documents.

34. In my view, it would be contrary to the public interest to disclose the identity of certain Defence members and cause unnecessary distress to them. Furthermore, individuals on social media platforms have the potential to treat the Defence personnel involved unfairly, which may affect the health, safety and wellbeing of these members.

35. Releasing details that could identify third parties, including their personal information, could reasonably be expected to cause harm to their privacy. I consider that the public interest is better served by maintaining the personal privacy of the individuals identified within the documents.

36. 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.

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

38. After weighing all of the above, I consider that, on balance the public interest factors against disclosure outweigh the factors for disclosure. I have therefore decided that it would be contrary to the public interest to release the information considered exempt under sections 47E(c), 47F and 47G of the FOI Act.

Further Information

39. Some of the documents released as part of this request contain a dissemination-limiting marker (DLM), as the documents are approved for public release the DLM has been struck through.

Gemma Mountney
Commander, Royal Australian Navy
Accredited Decision Maker
Navy Group