

# Attachment B – Reasons: Freedom of Information Request No. LEX2846 (Part 1)

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## Authority

As a Senior Government Lawyer, Legal and Procurement Branch, I am an authorised decision-maker under section 23 of the FOI Act.

## Retrieval process

To identify documents for your request, I arranged for relevant staff likely to be able identify documents to undertake a comprehensive search of the relevant electronic holdings used by the AEC. Relevant staff were interrogated on their findings, and confirmed comprehensive searches were undertaken and that further documents were unlikely to be within scope.

I also organised for the AEC's internal IT file management system team to produce a document that contained the information you sought under Category D.

## Relevant Documents

With regard to the Relevant Documents identified in Attachment A, I have decided:

- a) to grant access in full to Document Numbers 1, 2, 3, 4 & 5.
- b) to grant access to an edited copy of Document 6 from which exempt matter has been deleted under sections 47F and 42 of the FOI Act.

## Material taken into account

I have taken the following material into account in making my decision:

- a) the content of the documents that fall within the scope of your FOI Request;
- b) the FOI Act, specifically sections 42 and 47F;
- c) the guidelines ('[FOI Guidelines](#)') issued by the Australian Information Commissioner under section 93A of the FOI Act;
- d) the [FOI Guidance Notes](#), July 2011 issued by the Department of Prime Minister and Cabinet; and
- e) the *Privacy Act 1988*.

For the reasons set out below, I have decided that one or more of the following exemptions, identified in the schedule of documents at Attachment A for each document, applies to that document or part of it: sections 42 and 47F.

## Section 47F – Personal privacy

Section 47F of the FOI Act conditionally exempts a document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (with certain exceptions regarding the disclosure to a person of their own personal information).

In making my decision I had regard to:

- the extent to which the information is well known;
- 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;
- the availability of the information from publicly accessible sources;
- Part 6 (Conditional Exemptions) of the FOI Guidelines.

Under subsection 11A(5) of the FOI Act, the AEC (as an agency) must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

The disclosure of this information could reasonably be considered to prejudice the relevant individuals' right to privacy, including that of individuals who are no longer with the AEC. I have also identified that there is a general risk of harm to an individual in giving access to personal, which may be used to facilitate harassment.

Having regard to the above considerations and the factors set out in sections 11 and 47F of the FOI Act, I have decided that the balancing of considerations weighs in favour of not releasing the names of AEC staff below director level.

#### **Section 42 – Legal professional privilege**

Section 42(1) exempts a document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege (LPP).

A document is exempt from production on the ground of legal professional privilege if all of the following apply:

- i) there exists a lawyer-client relationship;
- ii) there have been confidential communications which are recorded in the document;
- iii) the communications were for the dominant purpose of providing legal advice or in the context of actual or anticipated legal proceedings; and
- iv) the privilege has not been waived.

I find that disclosure of the document exempted under section 42(1) would involve disclosure of document that would be exempt from production in legal proceedings on the ground of legal professional privilege.

The AEC has a legal branch which is staffed by lawyers admitted to practice and who hold practising certificates. The lawyers in this branch provide independent legal advice. They do not work on policy or other issues.

The document to which the exemption has been applied contain communications which were at the time and remain confidential and were for the dominant purpose of providing legal advice. I am not aware of any information that would suggest privilege in the communications has been waived.