



**Australian Government**  
**Department of Defence**

Reference: Objective ID: R27871221

**FOI 016/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the emails received on 25 October 2016, in which [REDACTED] sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act), of the Accredited Decision Maker's decision dated 7 October 2016.
2. The applicant's request was for access to the following under the FOI Act:
  1. *All correspondence between Prof. Prasher, Dr I Gardiner and ADF personnel since Sept 2015 to June 30 2016. And*
  2. *Executive summaries of relevant reports related to the decision to close child care centres in RAAF Bases, Darwin, Williamstown and Amberley*
3. The scopes excludes personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in the documents. Duplicates of documents are also excluded.

**Contentions**

4. In summary, the applicant requested a review of the decision to partially release documents with material considered exempt under section 42 [Documents subject to legal professional privilege] of the FOI Act.
5. The purpose of this statement of reasons is to provide the applicant with a fresh decision.

**Reviewing officer**

6. I am authorised to make this internal review decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

**Documents subject to internal review**

7. Noting the scope of the request, I found that some documents which were initially considered in the original decision did not actually fall within the scope of the request.
8. Taking into account the scope and the applicant's contentions, I identified the following 14 documents were subject to internal review: Items 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 15, 16 and 17. For ease of reference, the original item numbers on the documents will not change in this review.

9. The attachments to Items 10 and 12 were considered out of scope as they did not contain an executive summary. Further, the letter referred to at page 5 of Item 13 was released intact to the applicant in the original decision under Item 9, therefore it has not been considered as part of the internal review.

### **Internal review decision**

10. I have decided to vary the original decision by:

- a. releasing eight documents intact; and
- b. partially releasing six documents with exempt material under section 47C [Public interest conditional exemptions – deliberative processes] and/or section 47F [Public interest conditional exemptions - personal privacy] of the FOI Act.

11. Material considered irrelevant, such as duplicates of documents and emails, mobile telephone numbers and signatures, has been removed under subparagraph 22(1)(b)(ii) [Access to edited copies with exempt or irrelevant matter deleted] of the FOI Act. Where email trails are duplicated, pages have not been provided in order to reduce the amount of ‘blacked out’ pages released.

### **Material taken into account**

12. In arriving at my decision, I had regard to:

- a. the scope of the applicant’s request and subsequent request for internal review;
- b. the applicant’s contentions dated 25 October 2016;
- c. the decision and documents that are the subject of internal review;
- d. relevant provisions in the FOI Act;
- e. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
- f. the outcome of consultation with a third party; and
- g. advice from the Royal Australian Air Force (RAAF).

### **Findings and reasons for the decision**

#### **Section 47C**

13. Subsection 47C(1) of the FOI Act states ‘*A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of... an agency*’. The deliberative process involves the exercise of judgement in developing and making a selection from different options.

14. I have taken into account the Guidelines noting that one consideration in the exemption under section 47C is whether the document includes content of a specific type, namely deliberative matter. I found material in email correspondence and the executive summaries contain material of a deliberative nature which, if disclosed, would release matter relating to instructions and conclusions which are still in draft. The information contained in the emails and executive summaries can be described as the thinking process based on draft noise measurements and analysis for noise impact assessments, which are not yet finalised.

15. I have taken into account the Guidelines detailing types of ‘*purely factual material*’ that would not be regarded as deliberative, including:

- content that is merely descriptive.
- incidental administrative content.
- procedural or day-to-day content.
- the decision or conclusion reached at the end of the deliberative process.
- matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.

16. On review of the emails and executive summaries, I did not consider any of the material to be purely factual in any definitive sense. In my view, the emails and executive summaries contain draft assessments and conclusions derived from noise measurements and preliminary analysis. Work is still being conducted to finalise assessments and conclusions based on further metric data.

17. In light of the above, I considered some material in the emails and executive summaries to be exempt under section 47C of the FOI Act. My consideration of the public interest test is described later in this decision.

### **Section 47F**

18. Subsection 47F(1) of the FOI Act states: ‘*A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*’

19. Upon review, I identified personal information of individuals such as bank account details, payment amounts and personal actions.

20. The Guidelines issued by the Australian Information Commissioner note that ‘*the personal privacy exemption is designed to prevent the ‘unreasonable’ invasion of third parties’ privacy*’.

21. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to:

- 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. any other matters that the agency considers relevant.

22. Against those criteria, I found that:

- a. the specific personal information relating to the individuals is not well known; and
- b. the specific personal information is not readily available from publicly accessible sources.

23. 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.

### **Public interest considerations – 47C and 47F**

24. In deciding whether disclosure of the material would be unreasonable, I considered the Guidelines together with a range of factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to the public interest. Specifically, I considered if disclosure of the document would:

- a. promote the objects of the Act;
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure; and
- d. allow a person to access her or his personal information.

25. In conducting my review, I decided that releasing the documents may promote some of the objects of the FOI Act. Regarding the deletions made in accordance with section 47C, this material includes draft measurements and analysis figures in relation to noise impact assessments. As the figures are not yet confirmed or finalised, I determined that the nature of the deleted material would not inform debate on a matter of public importance, nor would its release promote effective oversight of public expenditure.

26. Regarding the deletions made in accordance with section 47F of the FOI Act, there is a public interest in protecting the privacy of individuals whose specific personal information appear in documents. This includes information of the nature described in paragraph 19. Accordingly, I decided that the section 47F deletions would not inform debate on a matter of public importance, nor would its release promote effective oversight of public expenditure or prevent the applicant access to their own personal information.

27. In addition to the above, I note that minimal redactions have been made to the final documents produced as a result of this matter. I consider that the public interest has been served by the material I have decided to release. Little or no value would be added by releasing the draft measurements and analysis figures provided in the remaining documents.

28. In deriving my decision I also considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act. None of the irrelevant factors have been taken into account in making my decision. After assessing of all these factors, I decided that the harm that could arise from disclosure of the deliberative matter and personal information far outweighs any favourable public interest factors that could be gained from its release.

### **Release of final report**

29. The RAAF has advised that the final report from Dr Prasher was initially due to Defence in June 2016. Due to unexpected delays in finalising the report, Defence did not receive the report until 21 November 2016. Defence will now conduct an initial review of the report. Pending the outcome of this initial review, Defence may require further input from Dr Prasher. Should this be the case, the final report is not expected until 2017.

30. Once the final report has been received, Defence will require time to give proper consideration to the report in order to obtain maximum benefit from the testing results, outcomes and recommendations. Consideration will then be given as to whether the report should be released publicly. However, I do note that the childcare facilities on base at RAAF Darwin and Amberley have closed and that the facility at RAAF Williamtown is due to close next month.

# TonyCorcoran

Digitally signed by TonyCorcoran  
DN: c=AU, o=GOV, ou=DoD, ou=PKI,  
ou=Personnel, cn=TonyCorcoran  
Date: 2016.11.25 11:04:52 +11'00'

Tony Corcoran PSM  
Accredited Decision Maker – Internal Review

25 November 2016