



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

Reference: AB2894712

**FOI 016/16/17 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:

*“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.*

*excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents”*

**FOI decision maker**

2. I am the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

**Documents identified**

3. I identified 17 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 number to each of the documents, which corresponds with the schedule.

**Decision**

6. I have decided to:

- a. release one document in full;
- b. partially release 16 documents in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is exempt under section 42 [documents subject to legal professional privilege] of the FOI Act; and
- c. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(a)(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).

## Reasons for decision

### Section 42 –Documents subject to legal professional privilege

8. Upon examination of the documents matching Item 1 of the request, I found they contained information from specialist technical reports obtained to inform legal advice, which could be privileged from production in legal proceedings, on the grounds of legal professional privilege (LPP).

9. Paragraphs 5.117 to 5.118 of the Guidelines state:

*... The underlying policy basis for LPP is to promote the full and frank disclosure between a lawyer and client to the benefit of the effective administration of justice. It is the purpose of the communication that is determinative. The information in a document is relevant and may assist in determining the purpose of the communication, but the information in itself is not determinative.*

*At common law, determining whether a communication is privileged requires a consideration of: whether there is a legal adviser-client relationship; whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation; whether the advice given is independent; and whether the advice given is confidential.*

10. Taking into account the above requirements of the Guidelines, I found that the legal advice provided in the documents was provided by legal professionals to their respective clients and was for the dominant purpose of providing legal advice in relation to a specific matter. The privilege created by that relationship for the provision of the legal advice has not been waived

11. I find that the release of that information would involve the disclosure of information that would be exempt from production in legal proceedings on the ground of legal professional privilege. Accordingly, I am satisfied that the information is exempt under section 42 of the FOI Act.

### Further Information

12. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

**catherine.wallis** Digitally signed by catherine.wallis  
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 ou=Personnel, cn=catherine.wallis  
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**C. Wallis**

Group Captain

Accredited Decision Maker

Air Force

7 October 2016

**FREEDOM OF INFORMATION REQUEST NO. 16/15/16**

<b>Item</b>	<b>Date</b>	<b>Document title</b>	<b>Author</b>	<b>Addressee</b>	<b>Number of pages</b>	<b>Document description</b>	<b>Decision under the Act</b>	<b>Reason for decision</b>
1	4/9/2015	Email	Alena Titterton	Deepak Prasher	10	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
2	7/9/2015	Email covering report	Alena Titterton	Deepak Prasher	50	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
3	9/9/2015	Email covering report	Deepak Prasher	Jessica Quinn	37	Email	Partial access	Deletions made in accordance with section 42 [documents subject to legal professional privilege] of the FOI Act
4	10/9/2015	Email	Jessica Quinn	Deepak Prasher	11	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
5	11/9/2015	Email	Deepak Prasher	Alena Titterton Jessica Quinn	1	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional

								privilege] of the FOI Act
6	11/9/2015	Email covering report	Jessica Quinn	Deepak Prasher	195	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
7	11/9/2015	Brief – Defence Childcare Noise Assessment – Second Prasher Preliminary Report August 2015	AIRCDRE Marshall	ACM Binskin Dennis Richardson	28		Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
8	24/9/2015	Email	Deepak Prasher	Jessica Quinn	2	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
9	29/9/2015	Letter – Dr Ian Gardner’s Support to Child Care Centre Information Sessions at Air Force Bases	AM Davies	S Lewis	1	Letter	Full release	N/A
10	30/9/2015	Email	Deepak Prasher	Alena Titteron Jessica Quinn	1	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
11	30/9/2015	Email	Jessica Quinn	Deepak Prasher	1	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited

								copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
12	2/10/2015	Email	Deepak Prasher	Jessica Quinn	3	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
13	6/10/2015	Email	Alena Titteron	Michael Lysewycz CMDR Jones Kristina Liddall	6	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
14	9/11/2015	Minute – Estate Investment Requirement – Replacement of Williamstown Childcare Centre, Preschool and Facilities for Play Groups	AVM McDonald	Glenn Whatman	12	Minute	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted]
15	20/4/2016	Email	Danika Casey	Deepak Prasher	10	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
16	28/6/2016	Email	Deepak Prasher	Aaron Anderson	7	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter

								deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act
17	13/6/2016	Email	Deepak Prasher	Aaron Anderson	1	Email	Partial access	Deletions made in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, and section 42 [documents subject to legal professional privilege] of the FOI Act