



Australian Government
Department of Defence

Freedom of Information
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FOI@defence.gov.au

Our reference: FOI 058/15/16

[Redacted]

By email: [Redacted]

Dear [Redacted]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

I refer to your email dated 1 September 2015, in which you sought access, under the *Freedom of Information Act 1982* (FOI Act), to:

“Heading of Figure 3, Page 19 of Report on Stage B (possible models for an optimal system of audit) 10 May 2013 > RSR audit - First report.”

Background

By email of 2 September 2015, we advised you that Ms Andrea Sansom, Assistant Director FOI, has waived any charges associated with processing your request. Accordingly, the statutory deadline for you to receive a response to your request is 1 October 2015.

The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

I am the accredited decision maker, pursuant to section 23 of the FOI Act, to make a decision on your FOI request.

Document identified

I have identified the document that is the subject of your request.

Decision

I have decided to release the table “headings” of the identified document with deletions made 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 exempt under section 47E [Public interest conditional exemptions – certain operations of agencies] of the FOI Act.

A copy of the document approved for release is at Enclosure 1.

Material taken into account

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);
- e. advice from subject matter experts within Defence; and
- f. advice from the Australian Government Solicitor.

Reasons for decision

I consider that the conditional exemptions in subsections 47E(a) and (d) of the FOI Act, apply to the document in the present case.

The Defence Audit Work Program, or list of audit reports, is not published broadly across Defence. Rather, it is limited to key points of contact within Defence, such as the Group Audit Coordinators, as it is considered as ‘need-to-know’ information. As regards to the three ANAO audits titles, I have released them as they are available on the ANAO’s website.

Section 47E – certain operations of agencies

Section 47E provides that *documents are conditionally exempt if their disclosure could reasonably be expected to:*

- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency; or*
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

Prejudice to the effectiveness of procedures or methods for the conduct of audits

An audit report, including its title, will be conditionally exempt pursuant to subsection 47E(a) of the FOI Act, where its disclosure could reasonably be expected to prejudice the effectiveness of procedures or methods for the conduct of audits by Defence. The prejudice may relate to future audits or audits generally, as opposed to the specific audits the subject of this request.

The term ‘prejudice’ in the context of the FOI Act is explained by the Guidelines. Under section 93A of the FOI Act I must have regard to the Guidelines.

At paragraph 5.19, the Guidelines explain that ‘prejudice’ means disadvantage, injury or detriment. At paragraph 6.91, which relates specifically to subsection 47E(a) of the FOI Act, the Guidelines further explain that

‘in the context of this exemption, a prejudicial effect could be regarded as one which would cause a bias or change to the expected results leading to detrimental or disadvantageous outcomes.’

A number of the audits have relied on information provided by Defence employees and stakeholders. For Defence audits to be effective, Defence relies upon the frankness and candour of its employees and stakeholders to provide information relevant to the audit. In some of the audit reports, the employees and stakeholders who provide certain information are identified. In some instances the audit is examining things that have not gone according to plan or areas identified as risk areas for Defence, and the people participating in the audit process might reasonably expect that findings will be made that reflect some disagreement with, or criticism of, the manner in which particular functions have been undertaken.

I am satisfied that participants in audit processes do not expect their contributions, or the audit report, including its title, to be made public. That is consistent with the nature of audit reports, which are typically written for an internal audience and contain information about weaknesses and vulnerabilities which need to be addressed. Audit reports, and the lists of audits conducted, are held closely within Defence and are usually only available to the Secretary, the audit team and managers within the part of Defence that has responsibility for the subject matter of the report.

If Defence employees and stakeholders become concerned that the information they provide as part of an audit could be released to the public pursuant to an FOI request, there is a high risk that some employees and stakeholders would be less willing to provide information in relation to future audits.

I am satisfied that this could reasonably be expected to prejudice the conduct of future Defence audits. This is because participation in an audit process is voluntary on the part of those stakeholders, and particularly those who are external to Defence. In many cases some information will be available from other sources, but an audit is always more effective if it is capable of being informed by the individuals who have personal knowledge of the subject matter of the audit. Any diminution in their willingness to make a comprehensive contribution can reasonably be expected to cause detriment or disadvantage, resulting in a much less effective final product.

I am satisfied that this document is conditionally exempt pursuant to subsection 47E(a) of the FOI Act.

Substantial adverse effect on the proper and efficient conduct of operations of Defence

An audit report, including its title, will be conditionally exempt if its disclosure would have a substantial and adverse effect on the proper and efficient conduct of the operations of Defence. The Guidelines explain (at paragraph 6.112) that an agency's 'operations' are its '*undertaking of expected activities in an expected manner.*'

Defence relies on internal audits to monitor and assess a range of practices and to ensure that Defence operates according to best practice. This objective is best achieved when the audits are frank and honest and tailored to a limited internal audience. There is a real risk that, if audit reports are released to the public pursuant to FOI requests, future reports will be prepared with a public audience in mind. This would significantly reduce the effectiveness of the audits and consequently could reasonably be expected to have a substantial and adverse impact on the proper and efficient conduct of the operations of Defence. This is reflective of the nature of audit reports, which are designed to expose weaknesses or vulnerabilities and make criticisms (with suggestions for improvements). It would be natural for auditors to be more careful about the programs they audit, and the level of detail they include about Defence's vulnerabilities if they are writing for a public audience.

Similarly, if internal audits are released to the public, there is a risk that Defence employees and other stakeholders providing information for the purpose of an audit would be less candid in their responses, leading to the audit reports being less useful to Defence. This could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Defence by compromising the ability of Defence to identify, through its audit processes, practices in need of improvement and the most effective recommendations to improve them.

I therefore find that the document is conditionally exempt pursuant to subsection 47E(d) of the FOI Act.

Public interest test

Pursuant to subsection 11A(5) of the FOI Act, I must provide access to the conditionally exempt documents unless it would be contrary to the public interest for access to be provided to the documents at this time. Subsections 11B(3) and (4) set out public interest factors that may be and must not be considered, respectively. The Guidelines at 6.9 explain:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, whereon balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

I acknowledge that there are some factors which favour disclosure in this case. In particular, the objects of the FOI Act promote disclosure and providing access to the document would therefore promote the objects of the FOI Act. Further, to the extent that some of the documents relate to the procurement processes of Defence and contracts with third parties, providing access to the documents would promote effective oversight of public expenditure. There is also a public interest in disclosing documents that identify shortcomings in agency practices and demonstrate steps that agencies take to promote and adopt best practice.

However, there are factors that do not favour disclosure and, on balance, I find that it is not in the public interest for access to the documents to be provided at this time.

In particular, there is a real potential that disclosure of the document would undermine the efficient operations of Defence, and this outweighs any benefit to the public that may result from access to the documents. Defence can ensure the greatest efficiencies in its operations by relying on a comprehensive and rigorous internal audit regime, with frank and candid input from employees and stakeholders and honest and direct assessment by the auditors. There is a strong public interest in Defence operating at peak efficiency and effectiveness and, in my view, that public interest is best advanced by exempting this material.

There is also a public interest in audit processes themselves being as effective as possible. There is a potential risk to the effectiveness of future audits that may result from auditors potentially writing to a public rather than an internal audience and employees and stakeholders potentially becoming less forthright in their responses to questions posed by auditors. This risk outweighs any benefit that may be derived from the public sharing of knowledge of the ways in which Defence auditors consider the practices and operations of Defence may be improved.

For example, in a recent audit some of the issues identified were linked to a previous management team. The audit was only able to deduce this because of the very candid comments from the line staff. In that case, the staff were comfortable conveying the issues as they were reassured that the auditors would not include in the report details of the source of their information. As a result, the audit was able to get to the real root cause of the issues noted in the report. This meant that recommendations were targeted to the underlying cause of the problems rather than the consequential issues.

Similarly, another recent audit identified systemic structural issues and represented examples where Defence's Audit Branch was able to contribute to continuous improvement within Defence, as it was fed into the First Principles Review implementation arrangements. The capacity to contribute in this manner relies upon Defence Audit Branch being able to clearly articulate issues within audit reports and cooperatively work with Defence senior leadership to achieve resolution. The inability to include forthright information in an audit report would inhibit the Defence Audit Branch's capacity to contribute in this manner.

I accept that there are powerful considerations in play which suggest disclosure is the appropriate outcome. In particular, the public interest in accountability and transparency weighs heavily in this case. However, there are also weighty considerations in favour of exempting these documents including the nature (ie the title) of the audits and, on balance, I am satisfied that they outweigh the general public interest in release. I have therefore decided that the documents are exempt.

Your Review Rights

Internal Review

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. You must request a review, in writing, within 30 days of the date of this letter, or the date you receive the documents. Requests can be sent to:

Email: FOIReview@defence.gov.au
 Fax: 02 626 62112
 Post: Freedom of Information Directorate - Reviews
 Department of Defence
 CP1-6-029
 PO Box 7910
 CANBERRA BC ACT 2610

Australian Information Commissioner

Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: enquiries@oaic.gov.au
 Phone: 1300 363 992
 Fax: 02 9284 9666
 Post: GPO Box 2999
 Canberra ACT 2601

Complaints

You may complain to Defence, the Information Commissioner or the Commonwealth Ombudsman about an action taken by Defence in the exercise of its power or the performance of its functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Department of Defence, your complaint can be addressed to Mr Tony Corcoran using the contact details below:

Email: tony.corcoran@defence.gov.au
Post: Tony Corcoran
Assistant Secretary Information Management and Access Branch
CP1-6-14
PO Box 7911
CANBERRA BC ACT 2610

Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)
Fax: 02 6276 0123
Post: Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Contact details for the Information Commissioner are above.

Should you have any questions in regard to this matter please contact this office.

Yours sincerely,



Linda McCann
Director
Freedom of Information

24 September 2015

Enclosure:

1. Document approved for release