



FOI 065/17/18 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:

"I request copies of advices, cables, directives, emails and policies confirming the domestic or international laws which apply to defence personnel working on US drone missions from the Australian-American defence facility at Pine Gap from 1 January 2014 to date.

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 19 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 2 documents in full;
 - b. partially release 17 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 7 [exemption of certain persons and bodies] and section 47G [public interest conditional exemptions-business] of the FOI Act; and
 - c. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(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); and advice from officers in the Joint Facilities and Technical Programs Directorate.

Reasons for decision

Section 7 – Exemption of certain persons and bodies

8. Section 7(1), Section 7(1A) and Section 7(2) of the FOI Act specify that persons, bodies and Departments listed in Division 1 and Division 2, Part II of Schedule 2, are exempt from the operation of the Act in relation to particular types of documents. The exemption extends to a person holding and performing the duties of an office specified in those Divisions.

9. I am satisfied that material contained in the identified documents pertains to persons holding and performing the duties of an office specified in Division 2, Part I of Schedule 2. Accordingly, I have decided to refuse access under section 7(2) of the FOI act.

Section 22 – Irrelevant matter deleted

10. Upon examination of the documents I found that it contained material that did not relate to the scope of the request. I considered that the material would disclose information that would reasonably regarded as irrelevant to the scope of the request. As such, in accordance with subparagraph 22(1)(a)(ii) of the FOI Act, I decided to remove this material.

Section 47G – business

11. Upon examination of the documents, I identified business information of a third party.

12. Under section 47G of the FOI Act a document is conditionally exempt if it discloses 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.

13. I note that the use of the word ‘could’ in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.

14. 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 a company as the disclosure of business affairs was provided in confidence.

15. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G of the FOI Act.

Public interest considerations – section 47G

16. Section 11A(5) provides that if a document is conditionally exempt, it must be disclosed “*unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest*”.

17. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, 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.

18. Disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, there is a strong public interest in not releasing information that would unreasonably affect a business.

19. I took into account the nature of the material and found that its disclosure in this instance would not significantly promote the objects of the Act, or inform debate on a matter of public importance as it related to business affairs provided in confidence.

20. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document. Therefore, I have decided that it would be contrary to the public interest to release the information considered exempt under section 47G of the FOI Act.

21. None of the factors listed in section 11B(4) [irrelevant factors] were taken into account when making my decision.

Further Information

22. 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.

Clarification/Context Statement

23. It should be noted that the date for two items, 5 and 12, which is included in a footer or final paragraph, has been automatically updated on the day it was last accessed or reviewed for this request. The actual date of the documents is reflected as accurately as possible in the schedule of documents.

Yours sincerely



Geraldine Gibson
Accredited Decision Maker
Strategic Policy and Intelligence Group

6 October 2017