



Australian Government
Department of Defence

FOI 093/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] (Request Number 3) under the *Freedom of Information Act 1982* (FOI Act), for access to:

Item 1. The 'desktop review' and/or any draft or document(s) summarising the findings of the same prepared by the Department of Defence, or any person or entity on its behalf, as referred to in paragraph 3.15 of the Foreign Affairs, Defence and Trade Reference Committee, 'Inquiry into contamination of Australian Defence Force Facilities (Part A) and the contamination of sites using firefighting foams (Part B)' dated 4 May 2016;

Item 2. In respect of any AFFF product(s) that contain PFOS and/or PFOA used at the RAAF Base Williamtown in the period 1992 to date:

- a. a copy of any label(s) of the product(s);*
- b. a copy of any Material Safety Data Sheet (MSDS) of the product(s);*
- c. any instructions for use of the product(s) or other document(s) recording information about the product issued by or on behalf of the manufacturer or supplier.*

Item 3. Any correspondence between the Department of Defence and National Industrial Chemicals Notification and Assessment Scheme (NICNAS) regarding AFFF in the period 1992 to present;

Item 4. Any correspondence between the Department of Defence and 3M Australia Pty Ltd, 3M Company and any of their related entities regarding AFFF in the period 1992 to present; and

Item 5. Any correspondence between the Department of Defence and NSW EPA regarding AFFF in the period 1992 to present.

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 9 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, item and serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:
- a. release 3 documents in full;
 - b. partially release 6 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 sections 33 [documents affecting national security], 47C [public interest conditional exemptions – deliberative processes], 47E [public interest conditional exemptions – certain operations of an agency], 47F [public interest conditional exemptions – personal privacy], and 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; and
 - 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 33 – national security

8. Section 33(a)(i) of the FOI Act exempts documents if disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth. Paragraph 5.26 of the Guidelines describes damage to the security of the Commonwealth as broadly referring to the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests.

9. The documents within the scope of this request contain information, which if released, could reasonably be expected to cause damage to the security of the Commonwealth. The documents contain detailed maps of Defence establishments. If this information were to be publicly released it would provide information that could assist groups or individuals who may wish to undertake illegal actions, including terrorism.

10. Accordingly I consider the release of the information so marked, would or could reasonably be expected to, cause damage to the security of the Commonwealth. I therefore consider this information exempt under section 33(a)(i) of the FOI Act.

Section 47C - deliberative process

11. Section 47C of the FOI Act provides that a document is conditionally exempt from disclosure requirements “*if its disclosure under the 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*”.

12. 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 have determined that some of the material contained is deliberative.

13. I also considered the question of purely factual material. In relation to section 47C considerations under the FOI Act, I have taken into account the Guidelines that state 'purely factual material' that would not be regarded as deliberative matter would include:

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

14. I have also taken into account that while purely factual material is not considered to be deliberative matter, where a document contains factual material that is related to the provision of policy advice and elaborates its context or likely impact, it may potentially come within the deliberative document exemption.

15. In my view, the documents contain options, opinions, recommendations and matters that are currently being considered by the Department. The documents contain material about Defence's policy-forming processes, dealing with the merit of particular issues, and proposing options for consideration which are closely intertwined with factual information.

16. Some options on matters which are referred to in the documents are still being considered and deliberated upon within Defence.

17. If the documents were released intact, it would impact on Defence's ability to make decisions in relation to sensitive issues without undue pressure and bias from external parties.

18. Release of the deliberative matter contained in the documents would harm the smooth operation of Defence business including the ability for Defence to present and communicate frank preliminary advice at the highest levels to the Government. Taking the above into consideration, I have decided that some parts of documents are conditionally exempt under subsection 47C(1) of the FOI Act.

Section 47E – certain operations of agencies

19. Section 47E(d) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency...

20. Where access has been denied to information under section 47E(d) of the FOI Act, I considered that the material could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Defence.

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

22. This information, if released, could affect the integrity and efficacy of the Department of Defence’s internal processes and procedures regarding contracts and contractors. The internal methods of managing such processes are not common knowledge and reliance on them is critical to ensure that Defence is receiving the highest level of service from external providers. If the information was made publicly available it could reasonably cause an adverse effect on Defence’s ability to conduct and manage working relationships with contractors in the future.

23. I am satisfied that the expected effect of disclosing to the applicant material identified exempt under section 47E(d) could adversely effect the proper and efficient conduct of the operations of Defence. I have decided that the specified material identified in the documents is conditionally exempt pursuant to subsection 47E(d) of the FOI Act.

Section 47F - personal privacy

24. Upon examination of the documents, I identified information, specifically addresses and information relating to personal circumstances, belonging to persons other than the applicant. This material satisfies the definition of personal information in section 4 of the FOI Act.

25. In accordance with section 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; and
- c. the availability of the information from publicly accessible sources.

26. Against those criteria I have found that this specific information is not readily available from publicly available sources, nor is the information well known. I have therefore decided that specified material identified in the documents is conditionally exempt pursuant to subsection 47F of the FOI Act.

Section 47G – business

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

28. 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.

29. As above, 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.

30. 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 disclosure of their capabilities and methods could diminish the competitive nature of the business and could affect the profitability of their business operations.

31. 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 – sections 47C, 47E, 47F and 47G

32. 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”*.

33. 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.

34. Disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of advice, opinions, recommendations and matters currently being considered by the Department could reasonably be expected to cause harm to the Department by prejudicing future decisions and actions.

35. Disclosing information obtained by Defence in the course of conducting investigations into AFFF would reveal addresses and other personal details of third parties. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the confidentiality of some material contained in the documents in order to protect personal privacy.

36. There is a strong public interest in not releasing information that would unreasonably affect a business. 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. However, disclosure has the potential to cause harm to the business and risk Defence’s commercial relationship with service providers.

37. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, I have decided that it would be contrary to the public interest to release the information considered exempt under sections 47C, 47E 47F and 47G of the FOI Act.

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

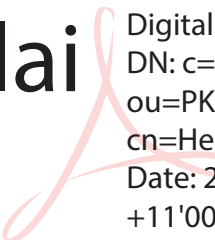
Clarification

39. In regards to Item 2, it is unknown whether all products and formulations referred to within the documents contain PFOS and/or PFOA.

Further Information

40. 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.

HelenBlain
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Helen Blain
Accredited Decision Maker
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