



Australian Government
Department of Defence

Reference: AF30986961

FOI 128/17/18 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:

“[Item 1] A copy of the audit report conducted after allegations of collusion by Defence staff were made last year

[Item 2] A copy of any other internal investigations, reviews or similar conducted in relation to the collusion allegations

[Item 3] A copy of any recommendations made as a result of the audits/ investigations referred to above”.

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

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 two documents as matching the scope of items 1 and 3 of the request. No documents were located that matched the scope of item 2.

Decision

4. I have decided to:

- a. partially release the identified documents on the grounds that the deleted material is considered exempt under section 47E [public interest conditional exemptions – certain operations of agencies], subsections (a) and (d), of the FOI Act; and
- b. refuse access to Item 2 of the request under subparagraph 24A(1)(b)(ii) [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

Material taken into account

5. 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 Audit Branch on the release of reports of audit activity; and
- f. principles on open public sector information issued by the Information Commissioner.

Reasons for decision

Section 24A (1) of the FOI Act

6. Section 24A(1) of the FOI Act states:

Document lost or non-existent

(1) An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document; and

(b) the agency or Minister is satisfied that the document:

(i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

7. A search of the Defence Policing & Security Management System and Objective was conducted to identify documents relevant to item 2 of this FOI application. No documents were located.

8. Based on the above, I am satisfied that no documents could be found matching the scope of item 2. Accordingly, I have decided to refuse access under section 24A of the FOI Act.

Section 47E – certain operations of agencies

9. Section 47E 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:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency.

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

Section 47E(a)

10. Defence's internal audit team provides an independent and objective internal audit service to the Department. Internal audit staff are responsible and accountable for maintaining the confidentiality of the information they receive during the course of their work. This information forms the basis for the preparation of audit reports which is directed to a limited internal audience.

11. The release of the information identified in documents which relate to the outcomes and associated recommendations of Defence audits and audit related activities will compromise the confidentiality of the information provided during the audit process (particularly information provided during audit interviews with stakeholders). If the information identified is released, and by inference the information provided by stakeholders, it will lead to stakeholders not being as forthcoming with information, knowing that it could compromise their position.

12. 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 strong public interest in maintaining the confidentiality of the material contained in the documentation. In my view, disclosure would cause a detriment to future requests for information, as individuals may not provide candid information if they were aware that it could subsequently be released under FOI.

13. 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.

Section 47E(d)

14. Section 47E(d) of the FOI Act permits conditional exemption of a document where disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

15. Upon review I identified information which was provided to Defence for the purpose of audit reports and management directed tasks. Defence is reliant upon internal audits and management directed tasks to screen and assess practices and to ensure Defence conducts its business efficiently and effectively.

16. Unauthorised disclosure of information potentially identifying the complainant's identity, or the identity of any other person named in relevant documents, could reasonably be expected to have a substantial adverse effect on the Department's management of the complaint and other complaints in the future.

17. I consider that should this information become publicly available, it would not only damage the ability to obtain honest and candid information in future audit reports and directed tasks, there would also be a risk that future audits and directed tasks would be prepared with a public audience in mind. This would impede on Defence's ability to conduct proper and thorough audits and directed tasks in the future.

18. As such, I consider that release of the material could reasonably be expected to prejudice the effectiveness of any future related audits or tasks conducted by Defence and for this reason, is conditionally exempt under section 47E(d) of the FOI Act.

19. 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.

Public interest considerations – subsection 47E(a) and subsection 47E(d)

20. I have found that the identified documents are conditionally exempt under section 47E of the FOI Act. 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'.

21. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines provided by the Information Commissioner, together with a range of factors that favour access to a document set out in subsection 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

22. I note that disclosure may promote some of the objects of the FOI Act as information held by the Government is a national resource. I also acknowledge that there is a public interest in releasing material that would inform public debate on the Defence's operations, in particular the conduct of audits and directed tasks.

23. 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 strong public interest in maintaining the confidentiality of the material contained in the documentation. In my view, disclosure would cause a detriment to future requests for information, as employees and stakeholders may not provide candid information if they were aware that it could subsequently be released under FOI. Further, there is an expectation that Defence manages its information in a sensitive way and only grants access to such information on a need-to-know basis.

24. There is also a strong public interest in Defence maintaining the Commonwealth's good internal working relationships with its stakeholders, and not releasing information that would harm the effectiveness in obtaining that information. Disclosure of this information would have a substantial adverse effect on the proper and efficient conduct of the operations of Defence and the management of its audit processes and would not, in my view, be in the public interest.

25. I have also considered paragraph 6.29 of the Guidelines, which specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- a. the management function of an agency; and
- b. the protection of a (public interest) discloser.

26. It is reasonable to consider that individuals named in investigation records maintained by Defence expect protection of their privacy and identity by Defence and therefore expect Defence to maintain a high level of confidentiality in respect to documents that may lead to their identity being disclosed.

27. Releasing information about a public interest disclosure, or others involved in a complaint or its investigation, could reasonably be expected to adversely impact on the agency's ability to gain the confidence of the complainant, or other current or future complainants, and the transfer of relevant information in the future. This could significantly undermine the investigative process and undermine the ability of the department to handle complaints without undue external influence.

28. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47E(a) and 47E(d) of the FOI Act.

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

Other Information

30. 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.

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Steven Burge
Accredited Decision Maker
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