



Australian Government
Department of Defence

Reference: OCA/OUT/2017/R32621896

FOI 160/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

... one copy of the following documents from 1 January 2014 to 20 Oct 2017:

Item 1 - *Any commercial agreement between the Department of Defence and Chris Masters or his Allen & Unwin, regarding access to Defence Documents.*

Item 2 - *All documents evidencing and relating to requests made by Chris Masters for access to Defence Documents.*

Item 3 - *All documents evidencing and relating to permissions granted by the Department of Defence to Chris Masters for access to Defence Documents.*

Item 4 - *All documents provided to Chris Masters by the Department of Defence.*

Item 5 - *Diary entries for the following individuals evidencing dealings between the Department of Defence and Chris Masters in relation to the Book:*

- i) Chief of the Defence Force, Air Chief Marshal Mark Donald Binskin AC, (or his delegate);*
- ii) Former Chief of the Defence Force, Air Chief Marshal Sir Allan Grant "Angus" Houston, AK, AC (Mil), AFC;*
- iii) Chief of Army, Lieutenant General Angus Campbell (or his delegate);*
- iv) Former Chief of Army, Lieutenant General David Lindsay Morrison AO;*
- v) and Inspector General Australian Defence Force, Mr James Gaynor CSC (or his delegate).*

Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request and duplicates of documents are excluded from this request.

FOI decision maker

2. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request. I am making this decision on documents falling within scope of Item 1 to Item 5(iv) only. A decision in respect to Item 5(v) will be made by the Office of the Inspector General Australian Defence Force.

Documents identified

3. I identified three documents, totalling 15 pages, matching the scope of this 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/Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:
 - a. release two documents in full
 - b. partially release one document 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 47F [public interest conditional exemptions - personal privacy] and section 47G [public interest conditional exemptions – business] of the FOI Act
 - c. refuse access to documents 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
 - d. 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)
 - e. consultation with a third party
 - f. advice provided by Office of the Chief of the Defence Force, Office of the Chief of Army and Headquarters Special Operations Command.

Reasons for decision

Section 24A(l) of the FOI Act - Requests May Be Refused

8. Section 24A(l) of the FOI Act states:

24A Requests may be refused if documents cannot be found, do not exist or have not been received

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.*

9. Paragraph 3.84 of the Information Commissioner Guidelines advises what detail this statement of reasons needs to include to refuse a request under section 24A(l):

The statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search.

10. To ensure that "all reasonable steps" have been taken in this request, every reasonable avenue of locating the documents for Items 2, 3 and 5(i), (ii) and (iv) has been exhausted. The details of these searches are outlined below.

11. **Items 2 and 3.** Detailed searches of the Defence Record Management System (Objective) and the group network drive was undertaken by the Office of the Chief of the Defence Force using the search parameters:

- a. Creation date is after 1 June 2006
- b. Chris Masters
- c. Masters
- d. Just War
- e. Manuscript
- f. Australian special forces in Afghanistan
- g. Allen & Unwin

h. Allen and Unwin

i. [REDACTED]

12. No documents were located that fell within scope of the request.

13. Headquarters Special Operations Command contacted a number of interviewees for whom contact details were available. Thirty five replies were received advising that no documents had been provided to Mr Masters.

14. Searches of the electronic diaries were also undertaken using "Masters" and "book" as the search terms. No diary entries were identified that matched the scope of the request.

15. I am satisfied that "all reasonable steps" have been taken to locate the documents sought by the applicant. I am satisfied that the documents cannot be found or do not exist, and refuse access to this request under section 24A(1) of the FOI Act.

Third party consultation

16. I decided to consult with a third party regarding their information which was contained in the documents. In response to this consultation, the third party has objected to the release of their business information. I have accepted the majority of matters raised by the third party who objected to their information, however, there is some information that I have decided to release against their initial response.

17. The department is required to advise the third party of this decision. Documents will be provided when all review rights have been exercised.

Conditional Exemption - Section 47F(1) - Personal Privacy

18. Upon examination of the document, I identified information, specifically a name and private address of individuals other than the applicant.

19. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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 document
- c. the availability of the information from publicly accessible sources
- d. the effect the release of the personal information could reasonably have on the third party.

20. I found that the:

- a. specific personal information listed is not well known
- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents

c. information is not readily available from publicly accessible sources.

21. The release of the name and private address identified in the document could reasonably be expected to cause harm to their privacy. I have considered the elapse of time since the records were created and consider it unreasonable to consult with those individuals over the release of their personal information. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations – Section 47F(1)

22. I have found that one of the identified documents is conditionally exempt under section 47F(1) 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.

23. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors are that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and it would allow the applicant access to his own personal information.

24. However, the disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

25. Paragraph 6.22 of the Guidelines 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 or harm:

- a. the protection of an individual's right to privacy
- b. the interests of an individual or group of individuals.

26. 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 section 47F(1) of the FOI Act.

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

Public interest conditional exemption – Section 47G(1)(a) – Business

28. Upon examination of the documents, I identified business information of a third party. The Guidelines advise that 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 (business information), where the disclosure of the information:

- *would, or could reasonably be expected to, unreasonably affect the 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. 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 would have an adverse effect on the professional, commercial and financial affairs of a third party.

31. Also, it could reasonably be expected that other authors and publishers could reduce their co-operation with Defence if they believed that the conditions of their commercial contracts may be publicly released against their wishes.

32. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G(1)(a) of the FOI Act.

Section 47G – Public Interest Considerations

33. When assessing whether the disclosure of the information is contrary to the public interest, I considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors].

34. In relation to section 11B(3)(a) of the FOI Act [Promote the objects of this Act (including all the matters set out in sections 3 and 3A)], information held by the Government is a national resource and release of the personal information would promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act.

35. However disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

36. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that disclosure of the information could reasonably be expected to:

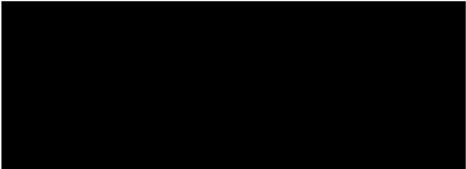
- harm the interests of an individual or group of individuals
- could reasonably be expected to prejudice an agency’s ability to obtain similar information in the future.

37. Releasing the document could reasonably be expected to harm the commercial and financial affairs of a third party. The harm to the third party’s activities and interests outweighs any benefits that may be gained by public scrutiny. It is for these reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 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.

Further information

39. Under the initial scope of the request, in excess of 1000 pages of documents were identified. Following consultation with the applicant, three of those documents were identified as falling within the scope of the request.



AR Collingburn
Colonel
Accredited Decision Maker
Army

15 December 2017