



Australian Government
Department of Defence

Reference: BO1330350

FOI 200/18/19 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:

“Special Purpose Aircraft Flight Incidents between July 2016 and June 2017

All reports produced within Defence about incidents on special purpose flights carrying federal MPs and/or the Governor-General, including emergency landings and issues with food and catering. Please specify which MPs were on board during these incidents. Limit search to between July 2016 and June 2017”.

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 authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified five documents, totalling 335 pages, 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/Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

- a. release one document in full;
- b. partially release four 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 47E [public interest conditional exemptions-certain operations of agencies], 47F [public interest conditional exemptions-personal privacy] and 47G [public interest conditional exemption-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 47E – Certain operations of agencies

8. 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...

9. 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 substantial adverse effect on the proper and efficient conduct of operations of Defence.

10. As noted above, use of the word ‘could’ in this provision requires no more than a degree of reasonableness being applied in deciding whether disclosure would cause the consequences specified. The reasonable expectation refers to material regarding details of the processes and procedures relating to aircraft.

11. I am satisfied that the expected effect of disclosing to the applicant material identified exempt under section 47E(d) could have a substantial adverse effect on the proper and efficient conduct of the operations of Defence; in that once the information was made publically available it could divulge areas of capability interest. 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

12. Upon examination of the documents, I identified information, specifically names and personal information of third parties other than the applicant.

13. In making my decision, I considered whether:

- a. the document contained personal information;
- b. the disclosure of the personal information would be unreasonable; and
- c. the disclosure of this information would, at this time, be contrary to public interest.

14. As a person’s identity is apparent or reasonably ascertainable from the identified information, I have decided that it constitutes personal information.

15. In determining whether release of the above personal information is unreasonable, I took into account, inter alia:

- 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 within the document; and
- c. the availability of the information from publicly accessible sources.

16. Against these criteria, I found:

- a. the specific identified information is not well known;
- b. the persons to whom the information relates is not widely known to be (or to have been) associated with the matters dealt with in the documents; and
- c. the specific identified information is not available from publicly accessible sources.

17. With reference to the assessment above, I consider the release of personal identifying information would be an unreasonable disclosure of personal information and therefore conditionally exempt under section 47F(1) of the FOI Act.

18. Section 11A(5) of the FOI Act allows access to conditionally exempt documents unless, in the circumstances, access to the document would be contrary to the public interest.

Section 47G – Business information

19. Upon examination of the documents, I identified business information of third parties. 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.

20. 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.

21. 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 the companies as disclosure of their information, without their consent could diminish the competitive nature of their business and/or their business operations.

22. 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 47E, 47F and 47G

23. Section 11A(5) of the FOI Act requires an agency to allow access to a conditionally exempt document unless, in the circumstances, access to the document at the time would, on balance, be contrary to the public interest.

24. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of relevant factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. While disclosure may promote some of the objects of the FOI Act, 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. I do not

consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities.

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 disclosure of the documents could reasonably be expected to prejudice:

- a. the protection of an individual's right to privacy;
- b. an agency's ability to obtain similar information in the future;
- c. the competitive commercial activities of an agency; and
- d. harm the interests of an individual or group of individuals.

26. I am satisfied that the expected effect of disclosing to the applicant material identified exempt under section 47E(d) could have a substantial adverse effect on the proper and efficient conduct of the operations of Defence; in that once the information was made publically available it could divulge areas of capability interest. I have decided that the specified material identified in the documents is exempt pursuant to subsection 47E(d) of the FOI Act.

27. I consider that the potential prejudice to the privacy of third parties outweighs any of the factors for disclosure of the identified personal information. I consider that the public interest is better served in protecting the privacy of individuals whose personal details are contained within these documents from release to the public at large.

28. Furthermore, I consider the release of the identified business information is likely to harm the commercial interests of the identified third parties. If Defence were to release this type of information it would lessen confidence in Defence's ability to protect information and restrict the future flow of such information. If the information was made public it could reasonably cause an adverse effect on Defence's ability to conduct and manage working relationships with contractors in the future. Finally, I do not believe that the removal of the identified business information significantly detracts from the value of the document/s being sought by the applicant.

29. 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 and deem the information exempt under sections 47E(d), 47F(1) and 47G(1) of the FOI Act.

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

Digitally signed
by
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Date:
2019.02.01
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R. Alberts
Group Captain
Accredited Decision Maker
Air Force

February 2019