



Australian Government
Department of Defence

Reference: AF28241612

FOI 205/16/17 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:

“...1. A copy of the agreement between the Australian Wildlife Conservancy (AWC) and the Department of Defence announced in 2016.

2. The Australian newspaper on 26 October 2016 referred to a meeting between Defence Department secretary Dennis Richardson and Atticus Fleming of the AWC. The meeting was arranged by US ambassador John Berry. Under FOI, I would like to know the date, time, place of the meeting. I would also like to see any minutes or correspondence arising in relation to or as a consequence of that meeting

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 two documents as matching the description of the request. I have added an FOI reference number and serial number to the documents.

Decision

4. I have decided to:

- a. partially release two 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 45 [documents containing material obtained in confidence], 47E [certain operations of agencies conditional exemption] and/or 47F [personal privacy conditional exemption] of the FOI Act; and
- b. 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

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. consultation with a third party; and
- f. advice from Service Delivery Division in Estate and Infrastructure Group and the Office of the Secretary of Defence.

Reasons for decision

Section 45 – Documents containing material obtained in confidence

6. Section 45(1) of the FOI Act states “*A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.*”

7. The Guidelines at paragraphs 5.158 and 5.159 state that:

A breach of confidence is the failure of a recipient to keep confidential, information, which has been communicated in circumstances giving rise to the obligation of confidence. The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.

"To found an action for breach of confidence (which means s45 would apply), the following five criteria must be satisfied in relation to the information:

- *it must be specifically identified*
- *it must have the necessary quality of confidentiality*
- *it must have been communicated and received on the basis of a mutual understanding of confidence*
- *it must have been disclosed or threatened to be disclosed, without authority*
- *unauthorised disclosure of the information has or will cause detriment.*

8. Upon examination of the document, I identified information that could reasonably be expected to cause damage to the ongoing commercial relationships of the Department of Defence and the Australian Wildlife Conservancy. Both parties agreed when signing the contract that there were specific components of the contract that were to remain confidential. This specifically applies to the Statement of Work, payment description, intellectual property schedule, and related information in the contract. The document includes operational information relating to a third party and the third party has not agreed to release the information. If the information was made public, it could reasonably be expected to cause detriment to the third party through financial loss from releasing confidential business information.

9. For the reasons provided above, I have decided that the specified material identified is exempt pursuant to section 45 of the FOI Act.

Section 47(E) of the FOI Act – Certain operations of agencies

10. 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...*

11. 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.

12. 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.

13. This information, if released, could affect the integrity and efficacy of the Department of Defence’s internal processes and procedures regarding base services. The internal organisation of base services, including land management, is not common knowledge and it is critical to ongoing services, both internal and external to Defence, that the operation of base services not be subject to outside influences.

14. 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

15. Where access has been denied under section 47F of the FOI Act, I considered that the material would constitute an unreasonable disclosure of personal information belonging to people other than the applicant.

16. Subsection 47F(1) of the FOI Act states “*A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*”

17. In relation to unreasonable disclosure of personal information, the Guidelines, at paragraph 6.138, provide that “*The personal privacy exemption is designed to prevent the unreasonable invasion of third parties’ privacy. The test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.*”

18. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, I had regard to:

- a. the extent to which the personal 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;
- c. the availability of the information from publicly accessible sources.

19. Against the above criteria I found specific information in the document that would readily identify the names of individuals. This information is not well known nor is it available from publicly available sources.

20. Following consideration of the above criteria, I am satisfied that the specific material is conditionally exempt under section 47F of the FOI Act.

Sections 47E and 47F - Public interest considerations

21. Subsection 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 that time would, on balance, be contrary to the public interest.

22. In determining whether to release the information, 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. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to the public interest. Specifically, I considered if disclosure of the information would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; or
- allow a person to access his or her personal information.

23. I found that 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).

24. 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 the protection of an individual's right to privacy or could reasonably be expected to harm the interests of an individual or a group of individuals.

25. On balance, I believe the potential prejudice to the privacy of persons and the harm to Defence outweighs any potential benefit from promoting the objects of the Act. 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 of the FOI Act.

26. In coming to the above decision, I considered subsection 11B(4) [irrelevant factors] of the Act. None of these factors were taken into account.

Third party consultation

27. I decided to consult with a third party regarding their information contained in the document. In response to this consultation, the third party has objected to the release of their confidential and personal information. The department is required to advise the third party of my decision. Documents will be provided when all review rights have been exercised.

Further information

28. No minutes were taken at the meeting between the Department of Defence Secretary, Mr Dennis Richardson, and Mr Atticus Fleming from AWC. Inquiries regarding the existence of such minutes were undertaken within the Office of the Secretary.

Digitally signed by
leanne.steinman
Date: 2017.03.30 13:44:51 +11'00'

Leanne Steinman
Accredited Decision Maker
Estate and Infrastructure Group

30 Mar 2017