



## **FOI 212/17/18 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:

*“Documents relating to hospitality declarations by Defence executives and military officers from FY 2014/15 to 2016/17”*

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

### **Documents identified**

3. I have been advised that following discussions between the FOI Directorate and the applicant it was agreed that the scope of the request only include the central gifts, hospitality and sponsorship register held by Defence for the financial years 2014/15 to 2016/17. In accordance with the revised scope of the request, Defence has extracted the relevant years requested from the central gifts, sponsorship and hospitality register held by the Chief Finance Officer (CFO) as the responsible area in Defence.

4. I identified one document as matching the description of the request.

5. I have added an FOI reference number to the document.

### **Decision**

6. I have decided to partially release the 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 sections 7 (2A) [Exemption of certain personal and bodies], 33(a)(i) [documents affecting security of the Commonwealth] and/or 33(a)(iii) [documents affecting international relations], 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 document 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 Army and the CFO Group with regards to the process for recording gifts, sponsorship and hospitality within Defence; and

- f. advice from International Policy Division following consultation with a foreign government.

### **Reasons for decision**

#### **Sections 7 (2A) - Exempt Agency**

8. Upon examination of the document, I identified information which was received from an intelligence agency.
9. Section 7(2A) of the FOI Act (supplemented by Schedule 2, Part II) lists agencies that are exempt from the operation of the Act in relation to documents that originated with or received from those agencies. The exemption extends to a part of a document that contains an extract from or a summary of an intelligence agency document, or a defence intelligence document.
10. I am satisfied that the material exempted under section 7(2A) of the FOI Act has been received from listed agencies.

#### **Section 33(a)(i) – Security of the Commonwealth**

11. Section 33 of the FOI Act exempts a document if its disclosure under the Act would or could reasonably be expected to, cause damage to the security, defence or international relations of the Commonwealth, or information that would divulge information or matter communicated in confidence by or on behalf of a foreign government.
12. The guidelines state:

##### ***Security of the Commonwealth***

5.29 *The term ‘security of the Commonwealth’ broadly refers to:*

- (a) *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests...*

5.30 *A decision maker must be satisfied that disclosure of the information under consideration would, or could reasonably be expected to, cause damage to the security of the Commonwealth...*

5.32 *The claim has been upheld in the following situations:...*

- (b) *The disclosure of a defence instruction of the Army’s tactical response to terrorism and procedures for assistances in dealing with terrorism would pose a significant risk to security by revealing Australia’s tactics and capabilities.*

13. Information in the document could jeopardise the capability of the Australian Defence Force (ADF), if released. This particular information pertains to the names of Defence personnel designated with Protected Identity Status.
14. I am of the view that if this information was disclosed it could be used by an adversary to identify and target key individuals involved in Defence operations, in order to gain access to operational information, thus compromising the capability of the ADF.
15. I am satisfied that the names of Defence personnel with Protected Identity Status, and information relating to their activities meets the requirements of section 33(a)(i) of the FOI Act and is therefore exempt.

#### **Section 33 (a)(iii) International Relations**

16. Section 33(a)(iii) of the FOI Act exempts documents that affect Australia's international relations. In regard to international relations the Guidelines state:

***International Relations***

*5.36 The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries*

17. Upon examination of the document, I found sensitive information relating to international relations.

18. I found that the document contains information relating to the value of gifts provided by several foreign governments. If this information was released it could affect the ability of Australia to maintain good working relationships with those countries. Any damage to close relationships with other countries would seriously affect Defence's ability to deliver on its obligations to protect Australia's interests.

19. Under current department policy all gifts must be assigned a monetary value. In many cases the recorded value is arbitrary as the cost of the gift may not have any commercial value. For many countries it is the giving of the gift that represents the significant value that each nation places on the relationship. Revealing these arbitrary values may damage long-standing or emerging arrangements between nations

20. After considering the above I am satisfied that the specific information meets the requirements of section 33(a)(iii) of the FOI Act and is therefore exempt.

**Other information**

21. Please note that as the document is a combined register, the listings attributed to ADF Sport within the Vice Chief of the Defence Force Group in the hospitality section are in fact sponsorship provided to ADF Sport Associations and are therefore not gifts. Sponsorships have been included in the document to improve transparency and ensure that the acceptance of any sponsorship does not give rise to a conflict of interest.

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Kim Ryan  
Accredited Decision Maker  
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