



Reference: AF28680308

FOI 240/16/17 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:

"I am seeking access to documents, specifically reports, executive/ministerial briefings and attachments, Senate Estimate Hearing reports, photos/CCTV/video footage (including footage from mobile phones, body worn cameras) produced since 1 January, 2015, relating to theft, suspected theft, loss or misplacing of firearms and any subsequent recovery if applicable.

Excluding duplicates, documents that have already been publicly released, media reports/articles/releases and correspondence with media, 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 30 documents 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 note that the request will include incidents pertaining to both Defence owned weapons in the firearms category and privately owned firearms on Defence premises. Incidents in that set will include mis-handling incidents.
7. I note that Defence collects both incident records and, for many of these records, creates incident reports and that both are stored on its incident database. Whilst all documents identified are unique, there is significant duplication in the information reported.
8. I have decided to:
 - a. release one document in full;
 - b. partially release 26 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 section 33(a)(i) [documents affecting national security], section 47E(d) [public interest conditional exemptions-certain operations of agencies], section 47F [public interest conditional exemptions-personal privacy], and/or section 47G [public interest conditional exemptions-business] of the FOI Act;

- c. refuse access to three documents of the request under section 37(1)(a) [documents affecting enforcement of law and protection of public safety] of the FOI Act; and
- 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

9. 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); and
 - e. advice provided by the Australian Defence Force Investigation Service.

Reasons for decision

Section 33 of the FOI Act - Documents affecting national security, defence or international relations

10. Section 33(a)(i) of the FOI Act provides that a document is exempt from release if its disclosure could reasonably be expected to cause damage to the security of the Commonwealth. For this exemption to be claimed I must be satisfied that there is a 'real' and 'substantial' risk of damage occurring. It is insufficient that there merely be a possibility of such damage.

11. In regards to the terms 'could reasonably be expected to' and 'damage', paragraphs 5.16 and 5.17 of the Guidelines provide that

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, be presently occurring, or could occur in the future.

12. In regards to the term 'damage', paragraph 5.28 states:

5.28 'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible...but [should be] determined on the facts of each particular case.

13. Having reviewed the information in light of the Guidelines, I am satisfied of the real and substantial risk of damage to national security on the grounds that the collective deleted information would allow vulnerability assessments of protective security arrangements and responses. Identification of protective security vulnerabilities could be exploited by a third party to the detriment of the Commonwealth

14. For these reasons, I find the material exempt under section 33(a)(i) of the FOI Act.

Section 37 of the FOI Act – Documents affecting enforcement of law and protection of public safety

15. I found that three documents contained material which, if disclosed, could reasonably be expected to prejudice the conduct of an investigation of a possible breach of the law.

16. Section 37(1)(a) of the FOI Act provides:

A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(a) prejudice the conduct of an investigation of a breach, or possible breach of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance.

17. In forming my decision, I had regard to paragraph 5.82 of the Guidelines which states that to be exempt under section 37(1)(b), “the document in question should have a connection with the criminal law or the processes of upholding or enforcing civil law or administering a law”.

18. I found that the documents relate to current investigations which are still continuing. The release of this information could impact on the direction of the investigations and pre-emptively release material which may be used in evidence. This release could therefore jeopardise the outcome of each investigation.

19. I therefore consider that the material is exempt under section 37(1)(a) of the FOI Act.

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

20. 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...

21. 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.

22. 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.

23. This information, if released, could affect the integrity and efficacy of the Department of Defence’s internal processes and procedures regarding security investigations. The internal methods of investigations of security breaches are not common knowledge and reliance on them is critical to ensure that Defence is maintaining the highest levels of physical security. Further, identification of database fields and formats, even empty fields, would provide information on Defence’s approach to protective security assessment that would reduce the effectiveness of mitigations.

24. 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 of the FOI Act – Personal privacy

25. Upon examination of the documents, I identified information, specifically, names, positions and other personal information belonging to people other than the applicant. This material satisfies the definition of personal information in section 4 of the FOI Act. In accordance with section 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 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; and
- c. the availability of the information from publicly accessible sources.

26. Against those criteria, I found that:

- a. the specific personal information is not well known to the general community;
- b. the person to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the documents; or
- c. the specific information is not readily available from publicly accessible sources.

27. Some of the individuals named in the documents are current investigators working for Defence. Disclosure of these peoples' names would place them at undue risk and compromise their personal privacy.

28. Noting the findings against the above criteria, I decided that the disclosure of this information would constitute an unreasonable disclosure of personal information belonging to a person other than the applicant. Notwithstanding the above, I found that the documents could be released with the specific material removed. Accordingly, I considered this material to be conditionally exempt under section 47F of the FOI Act.

Section 47G of the FOI Act – Business

29. Upon examination of the documents, I identified business information of a third party.

30. 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.

31. As above, 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.

32. 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 a company in terms of reputational damage and would expose the Commonwealth to additional risk through publication of companies employed to move weapons and explosive ordnance. Naming a

business that is somehow connected to a security incident of this nature without giving them a right of reply could have a significant impact on the good name of that business.

33. 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 47(E), 47F and 47G of the FOI Act

34. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

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

36. I consider the public interest in promoting the objects of the FOI Act have been satisfied and do not believe the release of personal information such as names, positions and other personal information would inform public debate on any matter of public importance in a meaningful way. Additionally, disclosure of this information would not promote oversight of public expenditure or allow a person to access his or her own personal information.

37. There is a strong public interest in not releasing information that would unreasonably affect a business or Defence's investigative processes. I took into account the nature of the material and found that its disclosure in this instance would not significantly promote the objects of the Act. However, disclosure has the potential to cause harm to Defence by compromising its ability to undertake investigations into security incidents.

38. In coming to the above decision, I also considered subsection 11B(4) [public interest exemptions - irrelevant factors] of the FOI Act. Accordingly, I am satisfied that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, I have decided that it would be contrary to the public interest to release the information considered exempt under sections 47E and 47F of the FOI Act.

Further Information

39. A number of the documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.



Mike Sullivan
Accredited Decision Maker
Defence Security and Vetting Service

31 March 2017