



**Australian Government**  
**Department of Defence**

Reference: Objective ID: R30827007

**FOI 255/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the email received on 11 July 2017, in which [REDACTED] sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act) of the Accredited Decision Maker's decision dated 22 June 2017.

2. The applicant's request was for access to the following under the FOI Act:

*"...final reports, as identified in the Defence Policing and Security Management System. The reference IDs are as follows:*

*IR-ADF01-DWN-2013-26*

*IR-ADF01-DWN-2013-47*

*IR-ADF01-DWN-2013-54*

*IR-ADF01-DWN-2014-56*

*IR-ADF01-DWN-2015-12*

*INV-ADF01-DWN-2015-32*

*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."*

**Contentions**

3. In summary, the applicant requested an internal review of the original decision.

4. The applicant contended that the decision is erroneous and a new determination be made.

5. The purpose of this statement of reasons is to provide the applicant with a fresh decision relating to the documents that are the subject of the internal review.

**Reviewing officer**

6. I am authorised to make this internal review decision under arrangements approved by the Secretary for Defence under section 23 of the FOI Act.

**Documents subject to internal review**

7. Noting the applicant's contentions, six documents are subject to the internal review.

8. Please find attached a schedule of documents which details the documents subject to internal review. My internal review decision is highlighted in blue.

## Internal review decision

9. After careful consideration, I have decided to vary the decision by releasing further information. The remaining material is considered exempt under paragraph 33(a)(iii) [documents affecting international relations], section 47E(d) [Public interest conditional exemptions – certain operations of agencies] and/or section 47F [Public interest conditional exemptions - personal privacy] of the FOI Act.

## Material taken into account

10. In arriving at my decision, I had regard to:
- a. the scope of the applicant's request and subsequent request for internal review;
  - b. the applicant's contentions dated 11 July 2017;
  - c. the original decision and documents subject to internal review;
  - d. relevant provisions in the FOI Act; and
  - e. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines)*.

## Findings and reasons for the decision

### Paragraph 33(a)(iii)

11. Paragraph 33(a)(iii) [Documents affecting national security, defence or international relations] of the FOI Act states:

*33 Documents affecting national security, defence or international relations*  
*A document is an exempt document if disclosure of the document under this Act:*  
*(a) would, or could reasonably be expected to, cause damage to:*  
 ...  
*(iii) the international relations of the Commonwealth*

12. Section 33 of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to cause damage to the security or defence of the Commonwealth. In regards to the terms, 'could reasonably be expected to' and 'damage', the Guidelines specify:

*5.13 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.*

*5.14 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, is presently occurring, or could occur in the future.*

*5.25 'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage was likely to result from disclosure of the document(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments. A dispute between individuals may have sufficient ramifications to affect relations between governments. It is not a necessary*

*consequence in all cases but a matter of degree to be determined on the facts of each particular case.*

13. With regards to international relations, the Guidelines provides:

*5.30 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 government agencies...*

*5.32 For example, the disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future. On the other hand, the disclosure of ordinary business communications between health regulatory agencies revealing no more than the fact of consultation will not, of itself, destroy trust and confidence between agencies.*

14. Upon review, I considered that the names and details of international counterparts involved were not publicly available. Release of such material without the explicit agreement of relevant foreign governments and foreign entities could also diminish the relationship with Defence and adversely affect the ability of the Australian Government to maintain good working relationships.

15. Further, release of the information could lessen confidence in Australia’s ability to protect information and restrict the future flow of such information to the Australian Government.

16. Taking the above into account, I have decided to exempt the material under paragraph 33(a)(iii) of the FOI Act.

#### **Section 47E(d)**

17. Section 47E(d) of the FOI Act permits conditional exemption of a document where disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

18. Upon review I identified information which was provided to Defence from other agencies as part of the investigation process. I consider that release of the material identified as exempt under section 47E(d) could reasonably be expected to prejudice the effectiveness of investigations conducted by Defence and for this reason, is conditionally exempt under section 47E(d) of the FOI Act.

19. Should this information become publicly available, it would not only damage the relations between Defence and other investigative agencies but it would also impede on Defence’s ability to conduct proper and thorough investigations in the future.

20. Noting the above, I find that the material considered exempt under section 47E(d) of the FOI Act is conditionally exempt on that basis.

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

**Public interest considerations – subsection 47E(d)**

22. I have considered the Guidelines, together with a range of factors that favour access to a document set out in section 11B(3) of the FOI Act. I consider that the factors outlined below weigh for and against disclosure in this case.

23. I note that disclosure may promote some of the objects of the FOI Act as information held by the Government is a national resource.

24. I acknowledge that there is a public interest in releasing material that would inform public debate on the Defence's operations, in particular the conduct of investigations.

25. Where I considered there was a genuine risk to the ability and effectiveness to conduct future investigations, I have placed significant weight on this factor.

26. In coming to the above decision, I also considered subsection 11B(4) of the FOI Act. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the material. I therefore decided that it would be contrary to the public interest to release the information considered exempt, under subsection 47E(d) of the FOI Act.

**Section 47F**

27. I identified personal information of individuals other than the applicant contained in the documents, such as names, photographs and other identifying information.

28. The Guidelines note that *'the personal privacy exemption is designed to prevent the 'unreasonable' invasion of third parties' privacy'*.

29. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, 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;
- c. the availability of the information from publicly accessible sources; and
- d. any other matters that the agency considers relevant.

30. Against those criteria, I found that:

- a. the specific personal information relating to the individuals is not well known;
- b. the specific personal information is not readily available from publicly accessible sources; and
- c. the specific personal information is information that the individuals would not wish to have disclosed without their consent.


31. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

**Public interest considerations under section 47F**

32. 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 set out in subsection 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

33. Disclosure of the specific personal information would promote some of the objects of the FOI Act as information held by the Government is a national resource and it would allow scrutiny or discussion of government activities.

34. While release of the specific information may be of some interest to the applicant, there is a strong public interest in protecting the privacy of the individuals whose personal details appear in the documents. Additionally, disclosure of the specific information would not promote oversight of public expenditure nor would it allow the applicant access to his own personal information.

**joanne.anderson**  Digitally signed by joanne.anderson  
DN: c=AU, o=GOV, ou=DoD, ou=PKI,  
ou=Personnel, cn=joanne.anderson  
Date: 2017.08.09 15:26:10 +10'00'

Joanne Anderson  
Decision Maker – Internal Review