



FOI 264/18/19 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:

“Documents produced in the last 12 months containing analysis and/or advice and/or possible impacts of global warming and/or climate change on the:

(a) operations, and

(b) requirements or possible requirements on the ADF.

The most recently created documents may well fulfil the scope of this request. In the event, that the information I am seeking is contained in part of page or parts of a given page or pages then I am also interested in the rest of that page or pages.

I do not require personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, I exclude duplicates of documents, and only require final versions 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 identified 26 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 have decided to:
 - a. release one document in full;
 - b. partially release 13 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) [Documents affecting national security], section 42 [Information subject to legal professional privilege], section 47C [Deliberative process – conditional exemption] and/or section 47F [public interest conditional exemptions-personal privacy] of the FOI Act;
 - c. deny access to 12 documents of the request in accordance with section 33(a) [Documents affecting national security] and section 42 [Information subject to legal professional privilege] 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

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;
 - 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 Attorney-General's Department, Department of Foreign Affairs and Trade, Department of the Environment and Energy, Mr Ian Dunlop and from departmental officers in ADF Headquarters, Force Design Division, Strategic Policy Division, Defence Legal and Infrastructure Division.

Reasons for decision

Section 22 – Irrelevant material deleted

8. Upon examination of the documents I found that it contained material that did not relate to the scope of the request. I considered that the material would disclose information that would reasonably be regarded as irrelevant to the scope of the request. As such, in accordance with Section 22(1)(a)(ii) of the FOI Act, I decided to remove this material.

Section 22 – Documents being denied in full

9. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to you with deletions, but have decided against this course of action, as the relevant documents would be meaningless and of little or no value once the exempt material is removed.

Section 33(a)(ii) – Documents affecting national security

9. I have identified information that, if released, would, or could reasonably be expected to, cause damage to the defence of the Commonwealth. Paragraph 5.34 of the Guidelines describes defence of the Commonwealth, as derived from previous Administrative Appeals Tribunal decisions, to include deterring and preventing foreign incursions into Australian territory as well as protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.

10. The documents contain information relating to Australia's defence capabilities, key critical infrastructure and operational training matters. Release of this information could reasonably be expected to cause damage to the ability of the Defence Force to remain an effective force as well as potentially providing an avenue through which foreign incursions could significantly impact our critical infrastructure. The national interest in not disclosing this information outweighs interest in disclosure.

11. Accordingly, I consider the release of the information so marked would, or could reasonably be expected to, cause damage to the defence of the Commonwealth and exempt the release of this information under section 33(a)(ii) of the FOI Act.

Section 42 – Documents subject to legal professional privilege

12. Upon examination of the documents I found a number that constituted legal advice and whilst in scope of the request were determined to be documents subject to legal professional privilege. Paragraph 5.129 of the Guidelines outlines that legal advice attracts legal professional privilege when there is a legal-client relationship; communication was for the purpose of giving legal advice; advice given is independent; and the advice given is confidential. These criteria were applied to each of the documents within scope and coupled with a broad approach as advised by the Guidelines (i.e. paragraph 5.137) I determined that the identified documents met the legal professional privilege criteria and therefore were exempt for release under section 42 of the FOI Act. The option of waiving legal professional privilege under section 42(2) was not exercised by the client for this request.

Section 47C – Documents subject to deliberative process

13. In assessing the documents I have identified deliberative matters, specifically, content that is in the nature of, or relating to; an opinion, advice or recommendation that has been obtained, prepared or recorded; or is a consultation or deliberation that has taken place as part of the deliberative process of the department. Paragraphs 6.58-6.62 of the Guidelines provides a framework for assessing what constitutes a deliberative processes and for this request deliberative matters were identified in the documents that related to assessing recommendations, exploring options and the provision of opinions as such were exempt under section 47C(1) of the FOI Act.

Public interest considerations – Section 47C

14. I have found that the identified documents are conditionally exempt under sections 47C of the FOI Act. Section 11A(5) provides that if a document is conditionally exempt, it must be disclosed unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

15. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors are that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, the disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

16. 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:

- a. an agency's ability to obtain confidential information, and
- b. the management function of an agency.

17. 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 sections 47C of the FOI Act.

18. None of the factors listed in section 11B(4) [Irrelevant factors] were taken into account when making my decision.

Section 47F – Personal privacy

19. Examining the documents, I identified information, specifically names of individuals and personal contact details.

20. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:
- 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 document,
 - c. the availability of the information from publicly accessible sources, and
 - d. the effect the release of the personal information could reasonably have on the third party.

21. I found that the:

- a. specific personal information listed is not well known,
- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents, and
- c. information is not readily available from publicly accessible sources.

22. The release of the names of personnel identified in the document could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations – Section 47F

23. I have found that the identified documents are conditionally exempt under sections 47F and 47G of the FOI Act. Section 11A(5) provides that if a document is conditionally exempt, it must be disclosed unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

24. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors are that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, the disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence 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 release of this information could reasonably be expected to prejudice or harm:

- c. the protection of an individual's right to privacy, and
- d. the interests of an individual or group of individuals.

26. 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 sections 47F and 47G of the FOI Act.

27. None of the factors listed in section 11B(4) [Irrelevant factors] were taken into account when making my decision.

Further Information

10. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

paul.ma
ndziy

A stylized red signature graphic that overlaps the text 'paul.ma' and 'ndziy'.

Digitally signed
by paul.mandziy
Date: 2019.03.21
13:39:19 +11'00'

Captain Paul K. Mandziy, CSC, RAN
Accredited Decision Maker
Strategic Policy and Intelligence Group

March 2019