



Australian Government
Department of Defence

Reference: R33775050

FOI 275/17/18 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:

“The incoming briefs for Veterans' Affairs and Defence Personnel Minister Michael McCormack.”

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 identified the requested document, being the Incoming Minister Brief - Minister for Defence Personnel, dated Wednesday, 20 December 2017. The document is 35 pages in total.

Decision

4. I have decided to:
- a. 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 [exemption of certain persons and bodies], 47E(d) [certain operations of agencies] and/or 47C [public interest conditional exemptions-deliberative processes] 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 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 Prime Minister and Cabinet; and

- f. advice from Ministerial Executive Communications and Coordination Division, Strategic Policy and Intelligence Group, Defence People Group, Estate and Infrastructure Group and the Chief Finance Officer Group.

Reasons for decision

Section 7 – Exemption of certain persons and bodies

6. Upon examination of the document, I identified information which was received from an intelligence agency.
7. 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.
8. I am satisfied that the material exempted under section 7(2A) of the FOI Act has been received from one of the listed agencies.

Section 47C – Deliberative processes

9. On review, I found that the document contained material which a claim for exemption under subsection 47C(1) of the FOI Act is warranted.
10. Subsection 47C(1) of the FOI Act states ‘A document is conditionally exempt if its disclosure under the Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative process involved in the functions of...an agency...’. Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.
11. The Australian Information Commissioner has issued Guidelines to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act.
12. I have taken into account the Guidelines, noting that one consideration under section 47C is whether a document includes content of a specific type, namely deliberative matter regardless of any harm that may result from disclosure. I have determined that the material identified in the document as exempt under section 47C is in fact deliberative.
13. The material to which 47C applies includes advice that is proposed to be provided to the Cabinet for the purposes of deliberation by a Minister or the Government of the Commonwealth. There are also details of recommendations relating to the honours and awards system currently being considered by the Minister. Furthermore, there is also advice to the Minister on Defence’s predicted budget across the decade. The material described above is either advice or recommendations that are still under consideration and being deliberated over by a number of areas. Premature release would limit the Minister’s ability to explore all options and potentially constrain Defence to a particular path. Furthermore, release of some of the material would impair the confidentiality of the Cabinet processes.
14. Having decided that the above material is exempt under deliberative processes, I then turned my mind to the question of purely factual material. In relation to section 47C considerations under the FOI Act, I have taken into account the Guidelines which state that, ‘purely factual material’ that would not be regarded as deliberative matter would include:
 - a. content that is merely descriptive;
 - b. incidental administrative content;

- c. procedural or day-to-day content;
- d. the decision or conclusion reached at the end of the deliberative process; and
- e. matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.

15. I have also taken into account that, while purely factual material is not considered to be deliberative matter, where a document contains factual material that is related to the provision of policy advice or opinion and elaborates its context or likely impact, it may potentially come within the deliberative document exemption. In particular, I took note of the Guidelines which state that:

'Purely factual material does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it'.

16. I note there is some ancillary factual material; however, this is intertwined with the deliberative content.

17. Based on the above, I considered the material to be conditionally exempt under section 47C of the FOI Act.

18. Section 11A(5) of the FOI Act allows access to a conditionally exempt document unless, in the circumstances, access to the document would be contrary to the public interest.

19. My public interest considerations are detailed below.

Section 47E – 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. In making my decision, I considered whether:

- a. prejudice could reasonably be expected to occur to the effectiveness of the conduct of the agency; and
- b. the disclosure of these documents at this time would, on balance, be contrary to the public interest.

22. Upon examination of the document, I found that it contained information which a claim for exemption under section 47E(d) of the FOI Act is warranted. The information that is conditionally exempt under section 47E(d) reveals details about Defence estate rationalisation and recommendations relating to honours and awards. The exempt information details Defence's plans on a number of sites including proposed sale and disposal. The material also reveals the status of a number of reports currently under review. Release of the information prematurely would inhibit Defence's ability to manage the rationalisation and honours and awards process. This would therefore affect the way Defence performs its functions and could reasonably be expected to adversely affect the proper and efficient conduct of Defence's operations.

23. Based on the above, I consider this material to be conditionally exempt under section 47E(d) of the FOI Act.

24. Section 11A(5) of the FOI Act allows access to a conditionally exempt document unless, in the circumstances, access to the document would be contrary to the public interest.

25. My public interest considerations are detailed below.

Sections 47C and 47E(d) - Public interest considerations

26. In determining whether to release the material conditionally exempt under sections 47C and 47E(d), I considered the Guidelines together with a range of factors that favour access to a document set out in sub-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 document would:

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

27. I consider that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. I also consider that release of the material would increase public participation in Government processes and increase scrutiny or discussion of Government activities. However, release of the material would impair the confidentiality of Cabinet processes, inhibit the full canvassing of issues in the development of Cabinet material and inhibit frankness and candour.

28. While I considered that disclosure of the rationalisation information, budgetary estimates and honours and awards consideration may increase scrutiny or discussion of Defence activities, it would also constrain Defence's ability to duly consider all options. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the confidentiality of some material contained in the documents while they are still in the deliberative stages.

29. It is for the reasons detailed above that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47C and 47E(d) of the FOI Act.

30. I have considered the irrelevant factors in sub-section 11B(4) [irrelevant factors] and did not take these in to account when making my decision.

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Melissa Davidson
Accredited Decision Maker
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