



Australian Government
Department of Defence

Reference: Objective ID: R31023143

FOI 290/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the email of 16 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 decision dated 23 June 2017.

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

"The Department of Defence has approved four military exports to Saudi Arabia in the past year and the Australian government is actively seeking more. Defence Industry Minister Christopher Pyne visited Riyadh in December 2016 to promote Australian materiel to Saudi Arabian government figures.

Could you provide:

a) The itinerary of the Minister for Defence Industry for his visit to Saudi Arabia in December 2016;

b) Submissions to the Minister for Defence Industry and media/parliamentary talking points in relation to the above-mentioned visit;

c) Submissions to the Minister for Defence Industry or Minister for Defence since January 2016 in relation to military exports to Saudi Arab."

3. The applicant's request excludes personal email addresses, signatures, PMKeyS numbers, mobile telephone numbers and duplicates of documents.

Contentions

4. In summary, the applicant has sought an internal review in relation to Ms Viney's decision where information was denied under section 33(a)(iii) [international relations], section 47E(d) [public interest conditional exemption – certain operations of agencies] and section 47G [public interest conditional exemption – business information] of the FOI Act.

5. The applicant also stated that she is specifically seeking information about the nature and value of Australian contracts to sell weapons to Saudi Arabia.

6. 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.

Documents subject to review

7. Taking into account the applicant's contentions, I identified the following documents as subject to internal review:
- a. Item 2 Serial 1;
 - b. Item 2 Serial 2;
 - c. Item 2 Serial 3; and
 - d. Item 3 Serial 1.

Reviewing officer

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

Internal review decision

9. After careful consideration, I have decided to vary Ms Viney's decision by releasing further information in Item 2 Serials 1 and 3. I have upheld the decision to deny access to the remaining material in those documents.
10. In relation to Item 2 Serial 2 and Item 3 Serial 1, I have upheld the decision to partially release those documents with the exempt material removed under section 33(a)(iii), section 47E(d) and/or section 47G of the FOI Act.
11. Please find attached the Item 2 Serial 1 in the form approved for release. As I have upheld the decision relating to Item 2 Serial 2 and Item 3 Serial 1 I have not provided another copy of these documents.

Material taken into account

12. In arriving at my decision, I had regard to:
- a. the terms of the original request and subsequent internal review application;
 - b. the decision and documents which are the subject of internal review;
 - 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. the outcome of third party consultation;
 - f. advice received from Office of the Minister for Defence Industry; and
 - g. advice received from International Policy Division.

Findings and reasons for the decision

Section 33 – international relations

13. The Guidelines state that *“the phrase ‘international relations’ has been interpreted as meaning the ability of the Australian Government to maintain good working relationships with other governments and international organisations and to protect the flow of confidential information between them.”*

14. The Guidelines also state that: *“but the phrase does encompass intangible damage, such as loss of trust and confidence in the Australian Government or one of its agencies.”*

15. I identified information relating to Australia's relationships with foreign governments and their officials which is not publicly available.

16. I consider release of this information could reasonably be expected to not only cause damage to those relationships but also damage to international confidence and close relationships with other countries. This in turn would seriously affect Defence's ability to deliver on its responsibilities to protect Australia's interests.

17. In my view, if this information was released, it would, or could reasonably be expected to cause damage to the international relations of the Commonwealth. I consider disclosure of the material could reasonably be expected to diminish the relationship with Defence and adversely affect the ability of the Australian Government to maintain good working relationships with other governments and international organisations.

18. The release of the information would also cause a loss of trust and confidence in the Australian government and foreign officials may be less willing to engage with Australia in business in the future. I consider that the national interest in not disclosing this specific information far outweighs the interest in release of the information.

19. Accordingly, I have found that the material is exempt under section 33(a)(iii) of the FOI Act.

Section 47G – business

20. Section 47G of the FOI Act states:

(1) A document is conditionally exempt if its disclosure under this Act would disclose 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.

21. I note the use of the word 'could' in this provision requires no more than a degree of reasonableness being applied in deciding whether disclosure would cause the consequences specified.

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

23. In making my decision I had regard to the Guidelines, specifically 6.162 which notes, *'The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself'*. It further adds, *'it is intended to protect the interest of third parties dealing with the government.'*

24. The objects of the FOI Act are to give the Australian community access to information held by the Government, as information held by the Government is to be managed for public purposes, and is a national resource. Defence considers the release of information from a pro-disclosure position. That is not to say that Defence releases everything. However, our

position, as intended by the objects of the FOI Act, is to release unless there is an exemption that can be applied to the material. After careful deliberation and taking into account the third party's response to the consultation, I considered section 47G could be applied to withhold this particular information.

Section 47E(d) of the FOI Act

25. I found that some of the documents contained information that could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of operations of Defence.

26. The use of the word 'could' in this provision requires no more than a degree of reasonableness being applied in deciding whether disclosure would cause the consequences specified.

27. I am satisfied that disclosure of the information would have the above effect on the proper and efficient conduct of operations of Defence. This information relates to sensitive issues affecting Defence and the way in which it carries out its functions which is limited to individuals on a need-to-know-basis. Should this information be disclosed the processes in conducted these functions would be impeded.

28. Taking into account the above, I have decided that the information is exempt under section 47E(d) of the FOI Act.

Section 47E and section 47G – Public interest considerations

29. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource.

30. While I consider release of this information may increase scrutiny or discussion of Defence activities, I found that disclosure would reveal sensitive approaches relating to Defence activities in particular, those related to relationships with foreign governments and businesses.

31. I also consider there is a strong public interest in preventing an adverse effect on the proper and efficient conduct of the operations of Defence.

32. I referred to the non-exhaustive list of factors against disclosure, as provided in the Guidelines. The factors that I found particularly relevant to this internal review were that release:

- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;
- could reasonably be expected to prejudice the competitive commercial activities of an agency; and
- could reasonably be expected to harm the interest of an individual or group of individuals, in this instance this relates to the successful bidder.

33. While I accept that there is a public interest in ensure that Defence undertakes its functions in a transparent and proper manner, I consider there is a public interest in protecting the confidentiality of the material. Release of the material could potentially harm Defence's ability to effectively manage its business and foreign relations.

34. Noting the above, I found that it would be contrary to the public interest to release the information considered conditionally exempt under section 47E and 47G of the FOI Act.

Further information

35. In relation to the applicant's contentions at paragraph 5 above, that she is specifically seeking information about the nature and value of Australian contracts to sell weapons to Saudi Arabia, and based on the review of the original decision, I can confirm that this information is not included in the requested documents.

joanne.anderson

Digitally signed by joanne.anderson
DN: c=AU, o=GOV, ou=DoD, ou=PKI,
ou=Personnel, cn=joanne.anderson
Date: 2017.08.30 13:43:20 +10'00'

Ms Joanne Anderson
Decision Maker – Internal Review