



FOI 303/16/17 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:

“All documents since 1 July 2014 related to, and copies of, bilateral agreements, arrangements, memoranda of understanding (MOUs) and the like now in effect, or expected or likely to be given effect, between the governments and/or agencies of Australia and Israel, including but not limited to those referred to by the Australian Prime Minister on 22 February 2017 in his speech of welcome to the Prime Minister of Israel Mr Benjamin Netanyahu. If there are legitimate national interest and/or security reasons why the actual texts of these agreements, arrangements, MOUs, etc, cannot be provided in full, this request is for details of the names, subject matter and summaries of them.

The specific subject matters covered by this request to DoD for documents under FOI are:

DOD-1: bilateral defence cooperation and enhanced defence exchanges – on urban warfare, development of unmanned aerial systems, armoured vehicle protection, defence against short range rockets, use of robotics in the battlefield, and the development and use of undersea technologies such as unmanned subsurface vehicles; and

DoD-2: exchanges between the Australian Defence Science and Technology Group and Israel’s counterparts (such as Mafat), including on improvised explosive devices.”

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 accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified three documents as matching the description of the request.
4. I have added an FOI reference number to each of the documents.

Decision

5. I have decided to:
 - a. deny access to one document on the grounds that the material is considered exempt under section 33 [Documents affecting national security, defence or international relations] of the FOI Act;

- b. partially release two 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 47C [public interest conditional exemptions-deliberative process] and section 33 [Documents affecting national security, defence or international relations] of the FOI Act;
- c. 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

6. 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. response to courtesy consultation with the Department of Industry, Innovation and Science; and
 - f. advice provided by International Policy Division, Defence Legal and the Department of Foreign Affairs and Trade.

Reasons for decision

Section 33 - Documents affecting national security, defence or international relations

7. Section 33(a)(iii) of the FOI Act exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. Paragraph 5.36 of the Guidelines describes international relations 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, including relations between government agencies.

8. The documents within the scope of this request contain information which, if released, could reasonably be expected to damage the international relations of the Commonwealth.

9. The documents contain details of negotiations with a foreign government which those governments have not publicly disclosed. If this information were to be publicly released by Defence, it would likely cause damage to the international relations of the Commonwealth insofar as it could limit the Commonwealth's ability to deal with those countries in relation to similar matters in the future. The disclosure of such information may diminish the confidence which another country has in Australia as a reliable recipient of its confidential information, making that country less willing to cooperate with Australian agencies in the future.

10. Accordingly, I consider the release of the information so marked would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. I therefore consider this information exempt under section 33(a)(iii) of the FOI Act.

11. I found that some of the documents contained information communicated in confidence to Defence by a foreign government. If the material was released without the express agreement of the foreign government it could harm the positive working relationship that

Australia has with that government. I am satisfied that the material is exempt under section 33 (b) of the FOI Act.

Section 47C – Deliberative processes

12. I found that the identified documents contain material in respect of which a claim for exemption under subsection 47C(1) of the FOI Act is warranted.

13. Upon examination of the documents I identified that they contained information which, if released, would disclose deliberative matter, namely information in the nature of opinion, advice and consultation that has taken place in the course of the functions of an agency, the disclosure of which would be contrary to the public interest.

14. Taking the above into consideration, I am satisfied that the documents contain deliberative matter that is conditionally exempt under subsection 47C(1) of the FOI Act.

Sections 47C - Public interest considerations

15. I found that the identified documents are conditionally exempt under section 47C of the FOI Act.

16. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. One relevant factor is that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource, but this must be balanced against the factors against disclosure. The FOI Act does not specify any factors against disclosure, but the Guidelines, specifically paragraph 6.22, provides a non-exhaustive list of such factors.

17. Of those factors listed in paragraph 6.22, I have found that the identified material, if released, could reasonably be expected to:

- a. prejudice an agency's ability to obtain confidential information; and
- b. prejudice an agency's ability to obtain similar information in the future.

18. I find that the public interest factors against disclosure outweigh the factors for disclosure of the identified information and I deem the information exempt under section 47C of the FOI Act.

Section 22 - Access to edited copies with exempt or irrelevant matter deleted

19. 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 document would be meaningless and of little or no value once the exempt material is removed.

Ruth Sandeman
 Digitally signed by
 Ruth Sandeman
 Date: 2017.06.01
 10:45:21 +10'00'

Dr Ruth Sandeman
 Accredited Decision Maker
 Defence Science and Technology Group

1 June 2017