1. I refer to the application by [Redacted] under the Freedom of Information Act 1982 (FOI Act), for access to:

   all mounting directives relating to ETB (enforced turn back) operations from December 2013 to the present day.

   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, exclude duplicates of documents.

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

3. I identified eight documents as matching the description of the request.

4. The decision in relation to each document is detailed in a schedule of documents at enclosure 1.

5. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

6. I have decided to partially release eight documents, on the grounds that the deleted material is considered exempt under section 33(a)(iii) [documents affecting international relations] and/or 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.

7. Some material that was considered irrelevant to the request was removed in accordance with section 22 [exempt or irrelevant material deleted] of the FOI Act.

8. 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 received from Border Protection Command and officers within the department (Maritime Operations Branch).

Reasons for decision

Section 22 – Edited copies with exempt or irrelevant matter deleted

9. Section 22 of the FOI Act provides that if an agency or Minister decides to:

(i) refuse access to an exempt document; or

(ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access;

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

10. Considering all of the above, I decided that it was reasonably practicable to remove the irrelevant material, as stated in the scope of your request. I have also removed some material from the beginning of each document which relates to the mode of transmission but does not form part of the Mounting Directions.

Exemptions under FOI Act

Section 33 – International relations

11. 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 5.30 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.

12. The documents within the scope of this request contain information, which if released, I consider could reasonably be expected to damage the international relations of the Commonwealth. The documents contain details of other nations in relation to management of suspected illegal entry vessels and potential illegal immigrants. If this information were to be publicly released by Defence without specific authorisation from the other nation, it would likely cause damage to the international relations of the Commonwealth insofar as it could limit the Commonwealth’s ability to deal with these countries in relation to similar matters in the future.

13. Accordingly, I consider that release of the information so marked, would or could reasonably be expected to, cause damage to the international relations of the Commonwealth.
Section 47E – Certain operations of agencies

14. Section 47E(d) of the FOI Act states;

   47E Public interest conditional exemptions – certain operations of agencies
   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.

15. In making my decision, I must consider whether:

   a. prejudice could reasonably be expected to occur to the effectiveness of the procedures
      or methods; and

   b. the disclosure of these documents at this time would, on balance, be contrary to the
      public interest.

16. In this context, a prejudicial effect could be regarded as one that would cause a bias or
    change to the expected results leading to detrimental or disadvantageous outcomes.

Whether prejudice could reasonably be expected to occur

17. The parts of the documents considered exempt under section 47E(d) reveal details of
    Royal Australian Navy ships’ names, operating locations, dates and planning details of
    intercepted vessels and people. If this material was released it could prejudice Defence’s
    ability to conduct effective maritime operations in support of the Government’s Operation
    Sovereign Borders. In particular, collation of this type of material could allow potential
    people smugglers to establish patterns of operations, ship allocations for particular tasks,
    patrol areas and operating procedures. While some of this material in isolation might appear
    innocuous, I consider that the cumulative effect of the material could enable development of
    plans to counter the Government’s efforts to protect Australia’s borders and in doing so could
    endanger the safety and/or health of crews involved in future operations. Further, removal of
    this material is consistent with the Government’s position of not commenting on operational
    matters associated with Operation Sovereign Borders.

18. Therefore, I consider that disclosure of these documents could reasonably be expected
    to be prejudicial.

Section 47F - Personal privacy

19. Section 47F(1) of the FOI Act provides that a document is conditionally exempt if
    ‘disclosure under this Act would involve the unreasonable disclosure of personal information
    about any person (including a deceased person)’.

20. In making my decision, I considered whether:

   a. the document contained personal information;

   b. the disclosure of the personal information would be unreasonable; and
c. whether the disclosure of this information would, at this time, be contrary to public interest.

Personal Information

21. The information deleted from the requested document under section 47F is personal information, including names, work email addresses and telephone numbers of Departmental officers involved in the specific tasks covered by these documents. As a person’s identity is apparent or reasonably ascertainable from the deleted information, I have decided that it constitutes personal information.

Unreasonable to disclose

22. In determining whether release of the above personal information is unreasonable, I took into account, inter alia:
   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 within the document; and
   c. the availability of the information from publicly accessible sources.

23. Against these criteria, I found:
   a. the deleted material is not well known;
   b. the persons to whom the information relates is not widely known to be (or to have been) associated with the matters dealt with in the documents; and
   c. the deleted information is not available from publicly accessible sources.

24. As described in paragraph 6.140 of the Guidelines, normally where individuals have been identified as acting in their official capacity, their personal information would not be deleted as this would not constitute an unreasonable disclosure of personal information. However, paragraph 6.141 provides examples of when disclosure of personal information of a Departmental employee might be unreasonable. In this case, some of the names and contact details could easily be linked through publicly available information to identify particular ship names which have been removed under s47E(d) above. Further, the media broadly has shown a propensity to approach individual Navy members through a variety of means to solicit information relating to Operation Sovereign Borders.

25. After considering all of the above, I consider the deleted material constitutes personal information.

Sections 47E/F - Public interest considerations

Factors in favour of disclosure

26. In determining whether to release the documents, I considered the guidelines provided by the Australian Information Commissioner, together with a range of factors that favour access to a document set out in 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 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. In reviewing the request, I decided that releasing the requested documents may promote some of the objects of the FOI Act.

28. Regarding the deletions make in accordance with section 47E(d) of the FOI Act, there is a public interest in not prejudicing the conduct of future maritime operations in support of Operation Sovereign Borders, including the potential risk of harm to individuals conducting operations directed by Government. Accordingly, I have decided that the section 47E(d) deletions would not inform debate on a matter of public importance, nor would their release promote effective oversight of public expenditure.

29. Regarding the deletions made in accordance with section 47F of the FOI Act, there is a public interest in protecting the privacy of individuals whose personal details appear in documents. This includes, inter alia, information of the nature described at paragraph 21. Accordingly, I have decided that the section 47F deletions would not inform debate on a matter of public importance, nor would their release promote effective oversight of public expenditure or prevent the applicant access to their personal information.

30. Conversely, the release of this deleted information could reasonably be expected to result in a decline in confidence in Defence’s ability to maintain the privacy of its members and other third parties.

31. In deriving my decision, I also considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act. I advise that none of the irrelevant factors have been taken into account in making my decision. After assessing of all these factors, I have decided that the harm that could arise from disclosure of the personal information far outweighs any favourable public interest factors that could be gained from its release.
Further Information

32. A number of the documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.

Yours sincerely

GN Fiedler
CMDR, RAN
Accredited Decision Maker
Navy Group

30 May 2016

Enclosure:
1. Schedule of documents