



Australian Government
Department of Defence

Reference: AV16504330

FOI 336/18/19 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:

“... specifically the KPMG report arising from its FIC study of corrosion mitigation for the F-35, as listed with CN3442454-A1” excluding private email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers contained in documents that fall within the scope of a FOI request unless you specifically request such details. Defence also excludes duplicates of documents and only considers 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 one document as matching the description of the request. The decision in relation to this document is provided below.

Decision

4. I have decided to 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 the deleted material is considered exempt under sections 33 [documents affecting national security, defence or international relations], 47 [documents disclosing trade secrets or commercially valuable information], 47D [documents affecting financial or property interests of the Commonwealth] and 47G [documents disclosing business information] 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 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; and
 - e. consultation with relevant areas in Defence.

Reasons for decision

6. The reasons for my decision follow careful consideration of the exemptions and public interest conditional exemptions in the FOI Act. I also considered the objectives of the Act, together with public interest factors both in favour and against disclosure of the material in the identified documents.

7. In addition, I took into account the intelligence technique known as ‘mosaic theory’. This theory holds that individual pieces of information, while not harmful in isolation, can generate a composite (or mosaic) when combined with other pieces of information.

8. Based on my considerations, I found the identified document can be released with deletions. Where I have denied access to information under sections 33(a)(ii), 47, 47D and 47G of the FOI Act, I have done so for the following reasons.

Section 33 – Documents affecting national security

9. Section 33 of the FOI Act exempts documents that affect Australia’s national security, defence and international relations. More specifically, paragraph 33(a)(ii) states that:

‘A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

...

(ii) the defence of the Commonwealth’

10. While the FOI Act does not define ‘defence of the Commonwealth’, previous Administrative Appeals Tribunal decisions indicate the term includes: deterring and preventing foreign incursions into Australian territory; and protecting the Defence Force from hindrance or activities which could prejudice its effectiveness.

11. The document you have requested contains some specific information on the management and application of the F-35A within the Australian defence context. This includes within the various scenarios discussed in the document for mitigating the risk of intergranular corrosion.

12. Further, I consider the costs associated with the sustainment of Defence materiel to be a fundamental input to capability and therefore, should be withheld where their disclosure could provide insight into the Commonwealth’s ability to the manage and apply that capability.

13. This is the case across several elements of the document, where the corrosion mitigation options and associated costs are presented in terms of managing Australia’s fleet of F-35A Joint Strike Fighters.

Section 47 – Trade secrets or commercially valuable information

14. There are a few instances in the document where I have withheld material under Section 47 to prevent the disclosure of information related to construction of the F-35A. It is my view this information is commercially valuable to Lockheed Martin as the manufacturer of the F-35A.

Section 47D - Financial or property interests of the Commonwealth

15. Section 47D conditionally exempts documents where disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth.

16. In this instance, the adverse effect relates to the Commonwealth’s ability to obtain best value for money through any competitive tendering process that may be pursued based on the options discussed in the paper.

17. More specifically, the costs in the paper and various aspects of the costing methodology reveal the expectations and likely criteria Defence would use to assess tenders for delivering intergranular corrosion mitigation options for the F-35A.

18. For this reason, I have denied access to some of the information in the document requested under Section 47D.

Section 47G – Documents disclosing business information

19. Section 47G conditionally exempts documents whose release would disclose information concerning the business, commercial and financial affairs of an organisation and could reasonably be expected to adversely affect the organisation in respect of its lawful business, commercial or financial affairs.

20. With regard to the document requested, there are several instances where this exemption has been applied to protect the business and commercial interests of Lockheed Martin. Various elements of the cost study could adversely affect the company's business in relation to the F-35A, particularly when viewed in isolation and noting the narrow context underpinning the study.

21. The exemption has also been applied so as not to prejudice to future supply of information from Lockheed Martin to Commonwealth, including in relation to the F-35A, sustainment of any current capabilities from Lockheed Martin and the acquisition of future capabilities.

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Naresh Bains
Accredited Decision Maker
Defence Science and Technology Group

11 April 2019