



Reference: R26293091

**FOI 367/17/18 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:

*“Item 1 - The itinerary of the Minister for Defence Industry in relation to his visit to Saudi Arabia, France, Poland and the United Kingdom over the period 29 October 2017 to 2 November 2017; and*

*Item 2 - Submissions to the Minister for Defence Industry and media and parliamentary talking points in relation to the abovementioned visit.*

*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, and documents sent to and from you. Furthermore, Defence 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 two documents as matching the description of the request.

**Decision**

4. I have decided to:

- a. partially release these 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 subsections 33(a)(i) and 33(a)(iii) [documents affecting national security or international relations], subsection 33(b) [documents communicated in confidence], subsection 37(1)(c) [documents affecting enforcement of law and protection of public safety], section 47E [certain operations of agencies - conditional exemption], section 47F [personal privacy - conditional exemption], and section 47G [business - conditional exemption]; 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 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 provided by Defence International Policy Division, Defence Industry Policy Division, Defence Export Control Office, Defence Science and Technology Group and Capability Acquisition and Sustainment Group.

### **Reasons for decision**

#### **Subsections 33(a)(i) and 33(a)(iii) – Documents affecting national security or international relations**

6. Paragraphs 33(a)(i) and (iii) of the FOI Act exempt documents that affect Australia's national security and international relations. These paragraphs state:

*'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:*

*(i) the security of the Commonwealth...*

*(iii) the international relations of the Commonwealth*

7. The term '*security of the Commonwealth*', as defined in section 4 of the FOI Act, broadly refers to the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests. The term '*international relations*' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations.

8. I have identified information within the documents that, if released, could jeopardise Australia's security and our relationship with Saudi Arabia, France, Poland or the United Kingdom.

9. The release of some information found in these documents would damage Australia's ability to maintain a good working relationship with Saudi Arabia, France and Poland, other governments and international organisations. The disclosure of the information may also diminish the confidence another country would have in Australia as a reliable recipient of its confidential information, making that country or agency less willing to cooperate with Australian agencies in the future.

10. In evaluating the potential harmful effects of disclosing sensitive information in the documents referred to in paragraph 4, I have also taken into account 'mosaic theory', which refers to individual pieces of information which may not be harmful in isolation, but which may cause damage to Australia's national security when combined with other pieces of information.

11. I have therefore decided to exempt this information under subsections 33(a)(i) and 33(a)(iii) of the FOI Act.

#### **Subsection 33(b) – Documents communicated in confidence**

12. Subsection 33(b) of the FOI Act exempts information communicated in confidence to the Australian Government or agency by another government or one of its authorities.

13. I have identified documents and information communicated in confidence between Governments. This information was communicated in a confidential forum and provided under the understanding that it would not be provided to a third party.

14. I have therefore decided to exempt this information under subsection 33(b) of the FOI Act.

### **Section 37(1)(c) – Documents affecting enforcement of law and protection of public safety**

15. The documents contain the private addresses of various personnel, including the relevant Australian Ambassadors and key interlocutors in each country. It also contains specific details on intra- and inter-country travel.

16. In a climate of increasing violence and terrorism requiring heightened security, the release of such details could provide adversaries with information that allows them to make these personnel a potential target for violence. Given the current security concerns, particularly in Saudi Arabia, I have a reasonable apprehension that danger could occur to both the personnel identified in the document and people that undertake future official trips should this information become known.

17. Accordingly, I consider the information identified as exempt under section 37(1)(c) of the FOI Act.

### **Section 47E(d) – Certain operations of agencies**

18. Section 47E (d) of the FOI Act states that *‘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.’*

19. Upon examination, I found that the documents contained information about sensitive issues affecting the Defence organisation. The exempt material provides information on the way Defence performs its functions, some of which is not publically known and limited to certain people within the organisation on a need-to-know basis. The release of this information, on the way Defence performs its functions, could reasonably be expected to adversely affect the proper and efficient conduct of Defence’s operations.

20. Taking the above into consideration, I am satisfied that the material is conditionally exempt pursuant to subsection 47E (d) of the FOI Act. My public interest arguments are detailed below.

### **Section 47F – Personal privacy**

21. Examining the documents, I identified information, specifically names of individuals other than the applicant.

22. Subsection 47F(1) of the FOI Act states that *“...[a] document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person...”*.

23. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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 with in the document;
- c. the availability of the information from publicly accessible sources; and
- d. the effect the release of the personal information could reasonably have on the third party.

24. I found that the:
- a. specific personal information listed is not well known;
  - b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents; and
  - c. information is not readily available from publicly accessible sources.

25. In accordance with subsection 47F of the FOI Act and paragraphs 6.138-6.148 of the Guidelines, I have found that this personal information is conditionally exempt because its disclosure would be unreasonable. My public interest arguments are detailed below.

**Section 47G - Public interest considerations for conditional exemptions - Business**

26. Upon examination of the documents, I also identified information specifically pertaining to the business, commercial or financial affairs (business information) of a third party. The Guidelines advise that under section 47G of the FOI Act a document is conditionally exempt if it discloses information:

*“concerning ..... the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of that information:*

- (a) *Would or could reasonably be expected to, unreasonably effect ... that organisation or undertaking in respect of its lawful business, commercial or financial affairs”*

27. In accordance with subsection 47G(3) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of business information, I had regard to:

- a. the extent to which the information is well known;
- b. whether the person or organisation to whom the business information relates is known to be associated with the matters dealt with in the information;
- c. the availability of the information from publicly accessible sources; and
- d. whether the documents contain business information about Defence and the third parties only or whether they contain business information about the applicant.

28. Against these four criteria, I found that:

- a. although the fact that Australia has Defence relationships with many countries is known to the general public (although perhaps not “well known”), the specific detail of the relationships and commercial arrangements is not;
- b. this information is not readily accessible from publicly available sources; and
- c. the documents do not contain business information about the applicant.

29. I note that the word “could” in this provision requires no more than a degree of reasonableness to be applied to deciding whether disclosure would cause the circumstances specified.

30. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that the effect of disclosing the identified material would have an adverse effect on the professional, commercial and financial affairs of a third party or the Commonwealth.

31. Also, it could reasonably be expected that other governments or organisations could reduce their cooperation with Defence if they believed that the status of their arrangements or conditions of their commercial contracts may be publicly released against their wishes.

32. Noting the above findings, I have decided that disclosure of the specific information would be an unreasonable disclosure of business information belonging to another country and related organisations.

33. Accordingly, I consider that the material is conditionally exempt pursuant to section 47G of the FOI Act. My public interest arguments are detailed below.

**Public Interest Conditional Exemption Considerations – section 47E, 47F and 47G**

34. Section 11A(5) of the FOI Act states that access must be given to a document even “...if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest...”.

35. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines, 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.

36. I consider that disclosure may promote some of the objects of the FOI Act, as information held by Government is a national resource. The disclosure of the advice and opinions relating to possible responses to questions for the Minister’s consideration would not, in my view, increase public participation in Government processes nor would it increase scrutiny or discussion of Government activities.

37. While I considered that disclosure may increase scrutiny or discussion of Defence activities, I found disclosure of some information in the document would reveal sensitive considerations associated with Defence activities. Disclosure of some information in the document would also reveal sensitive matters affecting the Defence organisation, particularly those related to relationships with foreign governments and commercial entities.

38. While I accept that 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. Disclosure of the sensitive or confidential material would potentially impact and harm the Commonwealth’s ability to effectively manage its business and foreign relations. While I found that disclosure may increase scrutiny or discussion of Defence activities, I found the public interest in protecting the information would far outweigh the public interest in the release of the identified material.

39. Further, paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I found particularly relevant in considering disclosure of the identified material are that, if released, this information could reasonably be expected to:

- a. prejudice the protection of an individual’s right to privacy;
- b. prejudice an agency’s ability to obtain confidential information; and
- c. prejudice an agency’s ability to obtain similar information in the future.

40. In weighing the public interest I also considered any detriment that disclosure may cause to the person to whom the information relates and the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

41. There is also a strong public interest in Defence maintaining the Commonwealth's security, good commercial and international relationships, and not releasing information that would harm the security of the Commonwealth. Full disclosure of the documents would have a substantial adverse effect on the proper and efficient conduct and operations of Defence and this would not, in my view, be in the public interest.

42. None of the factors listed in section 11B(4) of the FOI Act (Irrelevant Factors) were taken into account when making my decisions under the Public Interest or Business conditional exemptions

43. On balance, I have found that it would be contrary to the public interest to release the information considered conditionally exempt under sections 47E, 47F and 47G of the FOI Act.



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