



Australian Government
Department of Defence

Reference: BI79907

FOI 385/17/18 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:

“Documents, including memos, briefings and correspondence, addressing the potential construction of a Chinese military base on Vanuatu, excluding media inquiries and statements provided to media. I would like to confine my inquiry to documents created in 2018.

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 10 documents as matching the description of the request.

4. The decision in relation to each identified document is detailed in a schedule of documents.

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

Decision

6. I have decided to:

- a. release eight documents in full;
- b. partially release one document 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 33 [Documents affecting the national security, defence or international relations of the Commonwealth] of the FOI Act;
- c. deny access in full to one document under section 33 [Documents affecting the national security, defence or international relations of the Commonwealth] of the FOI Act; and
- d. 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

7. 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 the Department of Prime Minister & Cabinet and the Department of Foreign Affairs & Trade.

8. In making my decision, I carefully considered the application of the exemptions and the relevance (or otherwise) of public interest conditional exemptions. I also, as required by the FOI Act, considered the objectives of that Act, together with the public interest factors both in favour and against disclosure (as outlined in section 11B of the FOI Act).

9. As a result of these considerations, I have determined that the majority of identified documents warrant disclosure in full. One document warrants exemption in full, given my view – detailed in paragraphs 12-18 below – that its release would damage Australia’s international relations.

Reasons for decision

10. Where I have denied access to part or all the documents under sections 22 and 33 of the FOI Act, I have done so for the following reasons.

Section 22 – Edited copies with exempt or irrelevant matter deleted

11. 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.

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

12. Paragraphs 33(a)(i), (ii), and (iii) of the FOI Act exempts documents that affect Australia’s national security, defence, 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

(ii) the defence of the Commonwealth

(iii) the international relations of the Commonwealth

13. 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. While the Act does not define ‘*defence of the Commonwealth*’, the Information Commissioner’s guidelines refer to previous Administrative Appeals Tribunal decisions that interpret it as ‘*protecting the Defence Force from hindrance or activities that would prejudice its effectiveness*’. 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.

14. In evaluating potential harmful effects of disclosing information in the identified documents that would affect Australia's security, defence, and international relationships, I have also taken into account the intelligence technique known as 'mosaic theory'. This theory holds that individual pieces of information, while not harmful in isolation, when combined with other pieces of information can generate a composite that can damage Australia's security, defence, and international relationships. My regard to and consideration of this theory is in line with the FOI Guidelines, paragraphs 5.39-40.

15. I carefully considered the objectives of the Commonwealth's defence policy and international engagement settings outlined in the Government's 2017 Foreign Policy White Paper and 2016 Defence White Paper. The Defence White Paper states that "*Stability in Papua New Guinea [and] the wider Pacific and Timor-Leste... is vital to our ability to defend Australia's northern approaches, secure our borders, and protect our exclusive economic zone.*" In turn, the Defence White Paper explains that our "*nearer region...is of most immediate importance for Australia's security.*"

16. In considering potential harm associated with these policy settings and objectives, I also took into account my own professional insights as an international security practitioner with more than a decade of experience managing defence's regional engagement.

17. On the basis of the above, in considering the documents identified within the scope of your request, I found material whose release I have determined would hinder Defence's ability to adequately undertake the tasks anticipated for it under the Government's wider national security plans and policies. I also identified material whose release I determined would undermine Defence's ability to effectively plan in response to future contingencies, and material whose release would undermine the proper conduct of international defence relationships. Release of this information is exempted under subsection 33(a)(ii) of the FOI Act.

18. I also identified material whose release I determined would prejudice Defence's ability to operate effectively in its relations with other international partners, including Defence's ability to maintain good working relationships with other governments and officials. Release of this information is exempted under subsection 33(a)(iii) of the FOI Act.

Further Information

19. Some of the documents matching the scope of this request contained a dissemination limiting marker. As the documents are approved for public release, minus relevant exemptions, the marker has been struck through.

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Accredited Decision Maker

Strategic Policy & Intelligence Group

Department of Defence