



Reference: AF33138592

**FOI 386/17/18 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: HMAS Kuttabul Standing Orders especially in relation to: The control of nuisance noise/noise at the base including: use of generators, Tannoy systems, noise/disturbance relating to other works and the hours of application.*

*Item 2: Details of any applicable hotline, escalation or other reporting mechanism relating to noise disturbance or to provide community feedback.*

*Item 3: Details of high-level operational plans to relocate large navy vessels to the east side of base (and relevant timescales).*

Excluding personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers contained in documents that fall within the scope of a FOI request. Duplicates of documents and documents sent to or from me are also excluded.

**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. HMAS Kuttabul has advised that there are no Standing Orders in relation to nuisance noise at HMAS Kuttabul.

4. Navy understands the intent of the scope and therefore has identified three documents that contain information regarding the noise management plan at HMAS Kuttabul.

**Decision**

5. I have decided to:

- a. release two documents in full;
- b. partially release one document matching Item 1 of the request 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 sections 47F [public interest conditional exemptions-personal privacy] and 47G [public interest conditional exemptions-business] of the FOI Act; and
- c. refuse access to documents matching Item 2 and Item 3 of the request under section 24A(b)(ii) [Requests may be refused if documents cannot be found, do not exist or have not been received] 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);
  - e. advice received from HMAS Kuttabul; and
  - f. advice received from a third party.

### **Reasons for decision**

#### **Section 47F - Personal privacy**

10. Upon examination of the documents, I identified information, specifically the names and addresses of individuals other than the applicant.

11. 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 individual.

12. Against the criteria, I found:

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

13. The release of the individual's names and personal information identified in the document could reasonably be expected to cause harm to third parties. Taking into account the above factors, I consider that the release of personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and is conditionally exempt under section 47F(1) of the FOI Act.

14. Section 11A(5) of the FOI Act allows access to a conditionally exempt document unless, in the circumstances, access to the document would be contrary to the public interest.

15. My public interest considerations are detailed in paragraph 20.

#### **Section 47G - Business**

16. Upon examination of the document, I identified information of a third party. Under section 47G of the FOI Act, a document is conditionally exempt if it discloses information:

*'concerning a person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*

*(a) Would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.'*

17. I note that the use of the word 'could' in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself.

18. Upon examination of the document, I identified the business name and employee of the business that contracted AECOM to produce the report on behalf of Defence. I determined that this information is not publicly available. I am satisfied that the effect of disclosing the identified material could have an adverse effect on the mentioned company as the disclosure could affect their lawful business and future profitability.

19. In light of the above, I have decided that the specified material identified is conditionally exempt under section 47G of the FOI Act.

#### **Sections 47F and 47G - Public interest considerations**

20. I have found that the identified document is conditionally exempt under section 47F and 47G of the FOI Act. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed 'unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest'.

21. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource.

22. However, disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

23. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- a. the protection of an individual's right to privacy;
- b. the interests of an individual or a group of individuals;
- c. an agency's ability to obtain similar information in the future; and
- d. the competitive commercial activities of an agency.

24. I consider the release of personal information could reasonably be expected to result in the decline in confidence in Defence's ability to maintain the privacy of third parties. I consider that the public interest is better served in this case by maintaining the personal privacy of the individuals named.

25. Releasing business information of another third party is likely to harm AECOM's commercial interests. If Defence was to release this type of information it would lessen confidence in Defence's ability to protect information and restrict the future flow of such information. If the information was made public it could reasonably cause an adverse effect on Defence's ability to conduct and manage working relationships with its contractors in the future. Further, I do not believe that the removal of the identified business information significantly detracts from the value of the document being sought by the applicant.

26. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47F and 47G of the FOI Act.

27. None of the factors listed in section 11B(4) [Irrelevant factors] were taken into account when making my decision.

**Section 24A – Request may be refused if documents cannot be found, do not exist or have not been received**

28. Section 24A(1) of the FOI Act states:

*24A Request may be refused if documents cannot be found, do not exist or have not been received*

*Documents lost or non-existent*

(1) *an agency or Minister may refuse a request for access to a document if:*

(a) *all reasonable steps have been taken to find the document; and*

(b) *the agency or Minister is satisfied that the document:*

(i) *is in the agency's or Minister's possession but cannot be found; or*

(ii) *does not exist.*

29. A request for documents related to Item 2 and Item 3 of this request was sent to HMAS Kuttabul and Navy Strategic Command. Advice received from these areas is that no documents have been generated matching the scope of Item 2 and Item 3 of the request.

30. Based on the above, I am satisfied that no documents exist. I have therefore decided to refuse access under section 24A(1) of the FOI Act.

**Further Information**

31. To assist the applicant further, HMAS Kuttabul has provided the following information in relation to Item 2 of this request.

*The public can contact the Defence Environmental Hotline on (02) 9359 3077. This line is manned 24/7 by security personnel. All calls are logged and reported initially to the Officer of the Day as they are received and to the Commanding Officer and Base Support Manager the next working day. The Officer of the Day will assess the nature of the call and take appropriate action, including investigation of the report (noise source or otherwise). It is standard practice for each complaint to receive a call back from the Officer of the Day, Commanding Officer or the Base Support Manager.*

32. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

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**K Bizilj**  
 Captain, Royal Australian Navy Reserve  
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