



Australian Government
Department of Defence
Defence Support and Reform Group

Freedom of Information and
Information Management Branch
Department of Defence

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Our reference: FOI 271/12/13



By email: 

Dear 

1. I refer to your email, dated 29 January 2013, in which you re-submitted a request for access, under the *Freedom of Information Act 1982* (FOI Act), to:

"I seek access to documents relating to a meeting of the Defence Capability and Investment Committee on 27 March 2002. Specifically, the document titled "Australian Participation in the US Joint Strike Fighter Program System Development and Demonstration Phase" including all annexes/enclosures to the document."

2. The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

3. Mr Robert McGregor, Deputy Chief of Staff to the Secretary is the accredited decision maker, under the FOI Act, in relation to your request.

Identified document

4. Mr McGregor identified one document, titled "*Australian Participation in the US Joint Strike Fighter System Development and Demonstration Phase*", as matching the scope of the request.

Decision

5. Mr McGregor decided to release the identified document with material deleted, 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 exempt under section 33 [documents affecting national security, defence or international relations] and section 47G [public interest conditional exemptions – business] of the FOI Act. His reasons are set out below.

Material taken into account

6. In making his decision Mr McGregor had regard to:

- The content of the identified document in issue
- Relevant provisions in the FOI Act
- The guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the guidelines)
- Advice from the Project Manager New Air Combat Capability whose duties relate to the matters referred to in the document.

Exemption claim -Section 33

7. In reviewing the document, Mr McGregor found that it contained information which sets out sensitive information regarding current and future ADF military capabilities. He found that the document also contained material which discusses other military forces, their capabilities, and consideration of participation in the JSF project.

8. Further, Mr McGregor considered that some material contained in the document, if disclosed, has the potential to harm positive working relationships Australia has with other governments. If this material was to be released it could create a situation where other nations are less willing to enter into frank discussions with Australia in the future. Release of the material may also undermine the trust between Australia and its international partners. Mr McGregor considered that this material meets the intent of paragraph 33(a)(iii) of the FOI Act, as its disclosure could reasonably be expected to cause damage to the international relations of the Commonwealth.

9. Additionally, he found that the documents contained material which was provided to Australia in confidence by agencies from other national governments, as outlined in section 33(b) of the FOI Act. Mr McGregor considered that to release this information would run counter to 'maintaining good working relations with other governments' as set out in the guidelines.

Conditional exemption claim - Section 47G

10. Mr McGregor also found that the document contained some material regarding a commercial organisation which he considered, if released, would adversely affect the organisation in respect of its lawful business and commercial affairs. Mr McGregor considered therefore that those specific parts of the document are conditionally exempt under section 47G of the FOI Act.

Section 47G – public interest considerations

11. Section 11A(5) of the FOI Act provides that conditionally exempt material must be released unless, in the circumstances, access to that document would, on balance, be contrary to the public interest.

12. In assessing whether disclosure of the material is, on balance, contrary to the public interest, Mr McGregor considered the range of factors that favour access set out in section 11B(3) of the FOI Act. He considered that disclosure of the identified document, generally, may promote the objects of the FOI Act, by granting access to government-held information. However, he noted that, while release of the material may be of some interest to you, it would not inform public debate on any matter of public importance in any meaningful way, nor promote effective oversight of public expenditure.

13. In coming to his decision, Mr McGregor also had regard to the guidelines, specifically paragraph 6.174 which states that disclosure *could reasonably be expected to prejudice an agency's ability to obtain similar information in the future*. Mr McGregor was also of the view that the public interest in Defence being seen to treat commercial information in an appropriate manner outweighed any benefits of disclosure of the specific material.

14. Taking all of the above into consideration, Mr McGregor was satisfied that the disclosure of the conditionally exempt material would be contrary to the public interest.

Section 22

15. Notwithstanding the above, Mr McGregor considered section 22 of the FOI Act, and found that the exempt material could be removed and thus the document can be released with deletions.

Payment of Charges

16. In our letter, dated 29 January 2013, after deducting the free decision making time, the department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay charges for the administration of your request and paid the preliminary assessment deposit of [REDACTED] on 30 January 2013.

17. Upon completion of your request, after deducting the free decision making time, the actual amount for processing was calculated to be [REDACTED]. The remaining balance is the difference between actual charges and the deposit you have already paid.

18. Accordingly you are required to pay [REDACTED] in order to finalise your request. Please complete and return the form at Enclosure 1 to the FOI Directorate, this form is an agreement to pay charges and enables the FOI Directorate to continue processing your request without delay. Upon receipt of the form an invoice will be generated, noting this can take up to 3 business days. Details about payment of the invoice are on the form.

Rights of review

19. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights", setting out your rights of review is at Enclosure 2.

FOI Disclosure Log

20. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within two working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions. I will advise you of the publication date when the document is dispatched to you.

Further advice

21. The FOI Act can be accessed online at: <http://www.comlaw.gov.au/Details/C2011C00803>

22. Should you have any questions in regard to this matter please contact me directly on (07) 3332 6359. Alternatively, the FOI team can also be contacted on the details at the top of this letter.

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

1 March 2013

Enclosures:

1. Freedom of Information Payment Authorisation Form
2. Fact Sheet: Freedom of Information – Your Review Rights