



DEFENCE FOI 314/21/22 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:

“The agenda and minutes of meeting(s) and/or record of meeting(s) of the Submarine Advisory Committee for the period February 2021 to December 2021 (inclusive).”

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 (six pages) as matching the description of the request.

Exclusions

4. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Decision

5. I have decided to 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(a)(i) [Documents affecting national security] and section 47F [public interest conditional exemptions-personal privacy] 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); and
 - e. advice from the Submarine Domain within the Capability Acquisition and Sustainment Group.

Reasons for decision

Section 33(a)(i) – damage to the security of the Commonwealth

7. Section 33(a)(i) exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

8. In regards to the terms ‘could reasonably be expected to’ and ‘damage’, the Guidelines provide:

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

5.31 The meaning of ‘damage’ has three aspects:

i. that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.

ii. the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.

iii. The organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.

9. I identified materiel in the document which upon release could reasonably be expected to cause damage to the security of the Commonwealth by making public Defence’s methods for communicating classified information.

10. Accordingly, I have decided that the specified material is exempt pursuant to section 33(a)(i) of the FOI Act.

Section 47F - Personal privacy

11. Upon examination of the document, I identified information, specifically names of individuals other than the applicant.

12. 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 available sources; and
- d. the effect of the release of the personal information could reasonably have on the third party.

13. 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.

14. The release of the names of some of the individuals identified in the document could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of some of the individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F of the FOI Act.

Public interest considerations – Section 47F

15. I have found that parts of the identified document are conditionally exempt under section 47F 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’.

16. 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.

17. However, disclosure of this information would not increase public participation in Government processes (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of the Government’s activities (section 3(2)(b) of the FOI Act).

18. 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:

- a. prejudice the protection of an individual’s right to privacy
- b. harm the interests of an individual or a group of individuals

19. 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 of the FOI Act.

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

Further Information

21. The document matching the scope of this request contained a dissemination limiting marker (DLM). As the document has been approved for public release, the DLM has been struck through.

erin.sweet1 Digitally signed by erin.sweet1
Date: 2022.01.21 15:16:56 +11'00'

Erin Sweet

Accredited Decision Maker

Capability Acquisition and Sustainment Group