



DEFENCE FOI 087/22/23 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] (the applicant) under the *Freedom of Information Act 1982* (FOI Act) for access to:

“...any reports or briefs created regarding the visit of USS Springfield to HMAS Stirling dated 1/04/2022-1/05/2022”

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.

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 two 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 section 33 [documents affecting national security, defence or international relations] and section 47E(c) [public interest conditional exemptions-certain operations of agencies] 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; and
- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reasons for decision

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

7. Section 33(a)(i) of the FOI Act states:

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

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.

5.28 ‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible...but [should be] determined on the facts of each particular case.

9. The Guidelines provide that the term ‘reasonably expected’ in the context of section 33(a)(i) requires consideration of the likelihood of the predicted or forecast damage. In particular, at paragraph 5.27 the Guidelines indicate that “there must be ‘real’ and ‘substantial’ grounds for expecting the damage to occur which can be supported by evidence or reasoning. A mere allegation or possibility of damage will be insufficient ...” for the purposes of the exemption.

10. I find that disclosure of the information exempt under section 33(a)(i) as disclosure would cause, or could reasonably be expected to cause, damage to the ‘security of the Commonwealth’. The information identified contains specifications and sensitive information relating to an extremely broad collection of Defence systems and layouts. Disclosure of this information to the public could provide for an ability to assess operational profiles that should otherwise be kept unknown, as the release of the information could reasonably be expected to cause damage to the security of Commonwealth by making public information relating to a Defence capability that is highly sensitive.

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

Section 47E – Public interest conditional exemptions - certain operations of agencies

12. Section 47E(c) of the FOI Act states that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to....

c. have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

13. Paragraphs 6.113 and 6.114 of the Guidelines provide that where the document relates to the agency’s policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemptions in section 47E(c), namely, that:

- *an effect would reasonably be expected following disclosure;*
- *the expected effect would be both substantial and adverse.*

14. Further, for this exemption to apply, the documents must relate to:

- *the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety*

15. I consider that the management of staff and discharge of the Australian Government's legal responsibility to ensure the health and safety of its workforce may be substantially and adversely affected if the public servants' names are disclosed in response to this FOI request.

16. I have reviewed the documents and consider that due to the subject matter contained the release of Departmental staff names, in this instance, could see those individuals targeted for abuse as their roles in Defence are not known and could attract attention through publication.

17. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

Public interest considerations – Section 47E(c)

18. In assessing whether disclosure is on balance, contrary to the public interest, I considered the Guidelines together with a range of factors set out in section 11B(3) of the FOI Act, which favours access to a document:

- promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure;
- allow a person to access his or her own personal information

19. 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 or harm:

- the protection of an individual's right to privacy;
- the interests of an individual or group of individuals;
- an agency's ability to obtain similar information in the future; and
- the management function of an agency.

20. I note that disclosure of the material may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

21. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

22. After weighing all of the above, I consider that, on balance the public interest factors against disclosure outweigh the factors for disclosure. I have therefore decided that it would be contrary to the public interest to release the information considered exempt under section 47E(c) of the FOI Act.

Further Information

23. One of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM is struck through.

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