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DEFENCE FOI 093/22/23 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, briefs, or cables evaluating the use of ADF aircraft for aerial firefighting dated 1/06/2019 - 31/04/2020.”

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.

Decision

4. I have decided to:

- a. 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 [public interest conditional exemptions-certain operations of agencies] of the FOI Act.

Material taken into account

5. 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

6. Section 33(a)(ii)(iii) 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:

.....

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth.

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

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 Administrative Appeals Tribunal 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.

8. The review of one document revealed content upon release could reasonably be expected to cause damage to the, defence and international relations of the Commonwealth by disclosing information about Air Force’s capabilities as a result of engagement with a foreign government agency on the topic of aerial firefighting capability.

9. In analysing the potential harmful effects that the release of this information may have, I considered the information provided in the Guidelines on international relations and the mosaic theory. The Guidelines state:

5.36 The phrase ‘international relations’ has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

5.39 When evaluating the potential harmful effects of disclosing documents that affect Australia’s national security, defence or international relations, decision makers may take into account not only the contents of the document but also the intelligence technique known as the ‘mosaic theory’. This theory holds that individually harmless pieces of information, when combined with other pieces, can generate a composite – a mosaic – that can damage Australia’s national security, defence or international relations. Therefore, decision makers may need to consider other sources of information when considering this exemption.

5.40 The mosaic theory does not relieve decision makers from evaluating whether there are real and substantial grounds for the expectation that the claimed effects will result from disclosure.

10. I found the content contained in the document if disclosed, may add to what is already known in the public domain. By releasing this information, an adversary may be able to accumulate a more comprehensive picture of the current capability of the Air Force, thereby reducing its proficiency, efficiency and ability to defend the Commonwealth.

11. In light of the above, I have determined that material within the scope of this request is exempt under section 33 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 is the Australian Government's legal responsibility to ensure the health and safety of its workforce. I consider the release of the material may be substantially and adversely affected if the names and contact details in the documents are disclosed in response to this FOI request.

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

17. 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. My public interest considerations are set out below.

Sections 47E– Public interest considerations

18. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of relevant factors that favour access to a document set out in subsection 11B(3) [factors favouring access] of the FOI Act.

- a. promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure;
- d. 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 factors against disclosure. The factors I find particularly relevant to this request are that release of information could reasonably be expected to prejudice or harm:

- a. the management function of an agency;
- b. an individual's right to privacy; and
- c. the interests of an individual or group of individuals.

20. With respect to the disclosure of names and contact details, I have concluded that the disclosure of the information (as distinct from the document) would not promote the objects of the FOI Act. I do not consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities. This disclosure of information in the context of these documents is not, on balance, in the public interest.

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

22. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure and the information exempt under section 47E of the FOI Act.

Further Information

23. Aerial firefighting is not a task that the Australian Government requires the Australian Defence Force (ADF) to perform.

24. The ADF is able to support the states and territories, within resource limitations, in accordance with Defence Assistance to the Civil Community arrangements as part of a Whole of Government response, where state or territory capacity or resources do not exist or are not available in sufficient time.

25. The modification of existing aircraft for firefighting and conduct of aerial fighting, would significantly reduce the Air Force capacity for movement of people and equipment necessary to support firefighting efforts, or any other Humanitarian Assistance and Disaster Relief callouts.

Paul

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by Paul [redacted]
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Paul

GPCAPT

Accredited Decision Maker

Air Force