



DEFENCE FOI 080/22/23 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:

...a copy of any emails, cables, reports, presentations, or briefs relating to the deployment of RAAF C-27J aircraft to Fiji as part of Operation Solania.

Timeframe of request: 01/01/2021 to 01/08/2022

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 30 documents as matching the description of the request.
4. The decision in relation to each document is detailed in a schedule of documents.
5. I have added an FOI reference number and document number to each of the documents, which corresponds with the schedule.

Exclusions

6. 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

7. I have decided to:
 - a. partially release 27 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 sections 33 [documents affecting national security, defence or international relations], 47E [public interest conditional exemptions - certain operations of agencies] and 47F [public interest conditional exemptions - personal privacy] of the FOI Act;
 - b. deny access to three documents under sections 33 [documents affecting national security, defence or international relations] and 47F [public interest conditional exemptions - personal privacy] of the FOI Act; and
 - c. remove irrelevant material under section 22 of the FOI Act.

Material taken into account

8. 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 received from a Legal Officer of the Australian Defence Force.
 - f. advice received the Department of Foreign Affairs and Trade.

Reasons for decision

Section 22

9. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to you with deletions, and have adopted this approach except in three cases where I have decided against this course of action, as the document would be meaningless and of little or no value once the exempt material is removed.

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

10. Section 33(a) 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

11. In regards to the terms 'would or 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.*

Defence of the Commonwealth: [Damages]

5.35 *Damage to the defence of the Commonwealth is not necessarily confined to monetary damage ... However, in all cases, there must be evidence that the release of the information in question will be likely to cause the damage claimed.*

International Relations: [Damages]

5.37 *... The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the*

circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.

12. Additionally, the Guidelines state:

Defence of the Commonwealth

5.34 The FOI Act does not define 'defence of the Commonwealth'. Previous Administrative Appeals Tribunal (AAT) decisions indicate that the terms includes:

- *meeting Australia's international obligations*
- *ensuring the proper conduct of international defence relations*
- *detering and preventing foreign incursions into Australian territory*
- *protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

International relations

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.

13. I identified material in the documents which upon release could reasonably be expected to cause damage to international relations. The documents contain information relating to Australia's relationships with foreign governments and their officials. Release of this information could reasonably be expected to cause damage to those relationships. Any damage to international confidence and close relationships with other countries would seriously affect Defence's ability to deliver on its obligations to protect Australia's interests. Further, this information is not readily available to the public. As such, any release of the information would cause a loss of trust and confidence in the Australian government and foreign officials may be less willing to engage with Australian Government officials and Australian businesses in the future.

14. In addition, if this information were to be publicly released by Defence without specific authorisation from the relevant foreign country, it would likely cause damage to the international relations of the Commonwealth insofar as it could limit the Commonwealth's ability to deal with that country in relation to similar matters in the future. The disclosure of such information may diminish the confidence which another country has in Australia as a reliable recipient of its confidence, making that country less willing to cooperate with Australian agencies in the future.

15. Having regard to the Guidelines relating to what could reasonably be expected to cause damage to the defence of the Commonwealth, I consider that the hours flown broken down by the number of crew and other detailed flight information falls within this category. Specifically, providing intelligence on Australia's preparedness and logistic coordination with a foreign country will infer a level of capability either in isolation or when aggregated with other information.

16. In evaluating the potential harmful effects that the release of the information may have, I considered the current strategic security environment within which the Australian Defence Force operates. By releasing this information, an adversary may be able to assemble a more detailed and nuanced picture of the Australian Defence Force's operational and capability posture, thereby reducing its capacity and capability to secure and defend the Commonwealth.

17. Based on the above considerations, I find the specified material to be exempt under section 33 of the FOI Act.

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

18. 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;”

19. 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.*

20. 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*

21. I consider that the management of staff the Australian Government's legal responsibility to ensure the health and safety of its workforce.

22. I have reviewed the documents and consider that due to the subject matter contained in the documents, I consider that 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.

23. Accordingly, I am satisfied that the information is exempt under section 47E(c) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

24. Section 47F of the Act states:

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

- (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;*
- (d) *any other matters that the agency or Minister considers relevant.*

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

26. At 6.140 the Guidelines state an agency must have regard to certain matters in determining whether disclosure of the document would involve an unreasonable disclosure of personal information. 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.

27. The release of the names identified in the documents could reasonably be expected to cause harm to their privacy.

28. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information.

29. Accordingly, I am satisfied that the information is exempt under section 47F(1) of the FOI Act.

Sections 47E and 47F– Public interest considerations

30. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. The term ‘public interest’ is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered.

31. 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.

32. 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. an agency’s ability to obtain confidential information;
- b. an agency’s ability to obtain similar information in the future; and
- c. the interests of an individual or group of individuals.



33. With respect to the disclosure of both personal and Government employee information, 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 personal and/or Government employee information in the context of these documents is not, on balance, in the public interest.


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

35. 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 and 47F of the FOI Act.

Further Information

36. All documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.

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Christopher 
Colonel
Accredited Decision Maker
Headquarters Joint Operations Command