



DEFENCE FOI 521/21/22 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:

“All communications to and from the Defence Minister’s office and any other ministerial offices or Australian Government departments/agencies in relation to the public disclosure or announcement of the presence of a PLA-N Intelligence Collection Vessel (Haiwangxing) off the coast of Western Australia.

The search is limited to the period 6 May 2022 to 13 May 2022 inclusive.

To be clear, this application does not seek operational information which would likely be exempt from release, but is specifically targeted at communications between Defence and the entities listed above relating to the public disclosure or announcement of the ship’s presence.

Without limiting the scope of the request, I expect that the targeted communications would include, for example:

- Discussions/exchanges about the desirability or not of making the ship’s presence public*
- Discussions/exchanges about the potential methods/forms of such public disclosure, including whether it should be done by a Defence Minister press conference or a Defence statement alone or both.*
- Discussions about the timing for such disclosure, including whether any views from Defence on the suitability of doing this sooner or later than when it was made public on 13 May 2022.*
- Discussions about how this should be done to remain consistent with caretaker conventions including any arrangements for briefing the opposition.*

To the extent that some communications were not in writing, the scope includes any emails sent by Defence employees/personnel summarising phone calls or conversations with the Defence Minister’s office about matters otherwise within scope.”

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 four (4) documents as matching the description of the request.

4. The decision in relation to each document is detailed in the attached schedule of documents.

5. I have added an FOI reference number and item/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. release one (1) document in full; and
- b. partially release three (3) 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 47E(c) [public interest conditional exemptions-certain operations of agencies] 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 provided by subject matter experts in the Vice Chief of the Defence Executive and the Defence Executive Support Group – specifically the Ministerial, Executive Communication and Coordination Branch.

Reasons for decision

Section 47E – Certain operations of agencies

9. 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;”*

10. 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.*

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...

11. 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 (including position that may identify them) and contact details in these documents are disclosed in response to this FOI request.

12. 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 and their positions that may identify them, in this instance, could see those individuals harassed or abused and/or attract unwarranted attention through publication.

13. 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)

14. 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.

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

- 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.

16. 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:


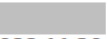

- a. the protection of an individual's right to privacy; and
- b. the interests of an individual or group of individuals.


17. While I consider that release of the material removed under section 47E(c) may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. Furthermore, the public interest is better served in protecting the privacy of the individuals whose personal details are contained within these documents from release to the public at large.

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

19. 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.

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by ben 
 Date: 2022.11.30
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Colonel Benjamin 
Accredited Decision Maker
Vice Chief of the Defence Force Executive