



OFFICE OF THE DEPUTY PRIME MINISTER AND MINISTER FOR DEFENCE

Freedom of Information Request 002/22/23 - Notice of Access Decision

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

Following Australian Deputy Prime Minister/Minister for Defence, Richard Marles' meeting with US Secretary of Defense, Lloyd J. Austin III at the Pentagon on 14 July 2022, I kindly request copies of the following documents pertaining to their meeting(s):

- Meeting Schedules
- Meeting Agendas
- Briefing papers

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 documents as matching the scope of the request.

Decision

4. I have decided to partially release documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] on the basis that the material is exempt under section 33 [documents affecting national security, defence or international relations] and section 47F [personal privacy] 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(a)(iii) – Documents affecting national security, defence or international relations

6. Section 33(a)(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;

(iii) the international relations of the Commonwealth

7. 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 organisation or personnel providing safety or protection from the relevant danger are the focus of the third aspect.

8. In regards ‘international relations of the Commonwealth’, the Guidelines provide:

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.

9. I find that disclosure of the material exempt under section 33(a)(iii) would cause, or could reasonably be expected to cause, damage to the international relations of the Commonwealth. The documents identify ongoing arrangements important to the Australian Government and outline objectives and background of activities. The release of the material would, or could reasonably jeopardise the internal relations of the Commonwealth.

10. Accordingly, I am satisfied that the information is exempt under section 33(a)(iii) of the FOI Act.

Section 47F - Personal privacy

11. Upon examination of the documents, I identified that they contained the personal information of individuals other than the applicant. 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 documents;
 - c. the availability of the information from publicly accessible sources;
 - d. the effect the release of the personal information could reasonably have on the individual.
12. Against the criteria, I found:
 - a. the specific personal information listed is not well known;
 - b. the individuals whose personal information is contained in the document is not widely known to be associated with the matters dealt in the document;
 - c. the information is not readily available from publicly accessible sources.
13. The Australian Defence Force is a diverse organisation undertaking roles of a high profile nature. If information pertaining to personnel imbedded in these roles were disclosed, it would be a risk to the health and wellbeing of the individuals both professionally and personally by way of unwarranted attention.
14. 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 and conditionally exempt under section 47F(1) of the FOI Act.
15. 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 outlined in the following paragraphs.

Sections 47F - Public interest considerations

16. 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:
 - 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.

17. I note that disclosure of the requested documents 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 Government process, nor would it increase scrutiny or discussion of Government activities.
18. There is a strong public interest in maintaining the confidentiality of material contained in the material. 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:
 - a. the protection of an individual's right to privacy;
 - b. the interests of an individual or group of individuals; and
 - c. the ability to obtain similar information in the future.
19. While I consider that release of the material removed under section 47F 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.
20. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.
21. Noting all of the above, I consider that, on balance, the public interest factors against disclosure outweigh the factors in support of their release. I have therefore decided that it would be contrary to the public interest to release the information considered exempt under section 47F of the FOI Act.

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Samantha
Senior Advisor