



BP28651791

DEFENCE FOI 216/22/23 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 documents held by the Department of Defence (Defence).

Background

2. On 16 October 2022, the applicant submitted a request for the following documents:

All documents concerning alcoholic beverage facilities in the RAAF VIP jets, including the original specification of the facilities, any subsequent modifications to the facilities, policies for stocking the facilities, services to the end users, correspondence, direction and complaints from users. Documents relating to the jets currently in service and documents created within the last 5 years are more relevant to the query.

Time frame: 1 January 1998 – 15 October 2022

3. On 18 October 2022, Defence wrote to the applicant seeking clarification of the requested documents. On 19 October 2022, the applicant revised the scope of the request to the following documents:

All documents concerning alcoholic beverage facilities in the RAAF VIP jets, including the original specification of the facilities, any subsequent modifications to the facilities, policies for stocking the facilities, services to the end users, correspondence, direction and complaints from users. The requested documents relating to the jets currently in service and documents created within the last 5 years from 2017 to current.

FOI decision maker

4. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

5. I identified eight documents as matching the description of the request.

6. The decision in relation to each document is detailed in a schedule of documents.

7. I have added an FOI reference number and document number to each of the documents, which corresponds with the schedule.

Decision

8. I have decided to:

- a. release three documents in full; and
- b. partially release five 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] of the FOI Act.

Material taken into account

9. 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 third parties as well as officers within Air Force and Capability Acquisition and Sustainment Group (CASG).

Reasons for decision

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

10. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse access to an exempt document or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.

11. Documents 1 to 3 contain information that does not relate to the scope of the request. As such, I have considered this information as falling outside the scope of the request.

12. I am satisfied it is reasonably practicable to remove the irrelevant and exempt material and release documents in an edited form.

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

13. 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:

(i) the security of the Commonwealth

...

(iii) the international relations of the Commonwealth

14. 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.*

Security of the Commonwealth: [Damages]

- 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 organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

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.*

15. Additionally, the Guidelines state:

Security of the Commonwealth

- 5.29 *The term 'security of the Commonwealth' broadly refers to:*
- (a) *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests*
 - (b) *the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations.*

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.*

16. I identified material in the documents which, upon release, could reasonably be expected to cause damage to the security of the Commonwealth. Disclosing the aircraft's internal layout places members of the Commonwealth and visiting Diplomats at risk of hostile infiltration during transportation to and from domestic and international engagements. Air Force and the Capability Acquisition and Sustainment Group (CASG) advise that disclosure of this material could reasonably be expected to expose members of the Commonwealth to risk as they transit between domestic and international engagements in the course of their official duties.

17. The documents also contain information which could reasonably be expected to damage the international relations of the Commonwealth. I identified information which, if disclosed, could prejudice Australia's relationships with foreign governments and their officials. In particular, it could inhibit our ability to provide security and protection to visiting foreign government officials during official visits. Release of the specified information could reasonably be expected to cause a loss of trust and confidence in the Australian government which could result in foreign officials becoming less willing to engage with Australian government officials.

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

anthony [REDACTED]

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GPCAPT

Accredited Decision maker

Air Force