



DEFENCE FOI 503/22/23 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:

Item 1. August 2006 Stage 2 environmental assessment HMAS Creswell by AECOM.

Item 2. August 2006 Stage 2 environmental investigations Shoalhaven Region Jervis Bay Range Facilities PART A and B (environmental investigation report and site management plan) AECOM.

Item 3. Any email communications or records of meetings between representatives of 3M Company and

- a) The Chief of the Air Force*
 - b) Deputy Secretary, Estate & Infrastructure Group*
 - c) First Assistant Secretary, Infrastructure*
 - d) Assistant Secretary, PFAS Investigation and Management*
- in which PFAS were discussed (per- and poly-fluoroalkyl chemicals) in the period from 2014 to present.*

Item 4. Any email communications or records of meetings between representatives of the United States Air Force and

- The Chief of the Australian Air Force*
 - Deputy Secretary, Estate & Infrastructure Group*
 - First Assistant Secretary, Infrastructure*
 - Assistant Secretary, PFAS Investigation and Management*
- in which PFAS were discussed (per- and poly-fluoroalkyl chemicals) in the period from 2014 to present.*

Background

2. On 9 March 2023, the applicant agreed to a 30-day extension of time in accordance with section 15AA [Extension of time with agreement] of the FOI Act, making 2 April 2023 the new due date.

3. On 29 March 2023, Defence initiated a third-party consultation in accordance with section 27 [Consultation – business documents] of the FOI Act, further extending the due date to 2 May 2023, in accordance with section 15(6) [Requests for access] of the FOI Act.

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 two (2) documents as matching the description of the request.

Decision

6. I have decided to:

- a. partially release these 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 47F [public interest conditional exemptions-personal privacy] of the FOI Act; and
- b. refuse items 3 and 4 of the request under section 24A [documents cannot be found, do not exist or have not been received] of the FOI Act.

Material taken into account

7. In making my decision, I had regard to the:

- a. terms of the request;
- b. content of the identified documents in issue;
- c. relevant provisions in the FOI Act;
- d. Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
- e. advice received from subject matter experts within the Security and Estate Group; and
- f. advice received as part of a third-party consultation.

Reasons for decision

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

8. 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.

9. Accordingly, I am satisfied that it is reasonably practicable to remove the exempt material and release the documents to you in an edited form.

Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

10. Section 24A(1) of the FOI Act states:

(1) An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document; and

(b) the agency or Minister is satisfied that the document:

(i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

11. To ensure that 'all reasonable steps' have been taken in this request, every reasonable avenue of locating the documents request as for items 3 and 4 has been exhausted. Personnel from Security and Estate Group searched for files within the Defence Records Management

system, 'Objective', containing keywords relevant to items 3 and 4 of the request. No records were found matching this search criteria.

12. I am satisfied that 'all reasonable steps' have been taken to locate the documents sought by the applicant. I am satisfied that the documents cannot be found or do not exist, and refuse items 3 and 4 of the request under section 24A(1) of the FOI Act.

Section 47F - Personal privacy

13. Upon examination of the documents, I identified information of individuals other than the applicant.

14. Section 47F of the FOI Act states that:

- (1) *A document is conditionally exempt if its disclosure...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.*

15. The Guidelines state, at paragraph 6.140, that when assessing whether the disclosure of personal information is unreasonable, I consider the following factors:

- i. the extent to which the information is well known;
- ii. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the documents; and
- iii. the availability of the information from publicly accessible sources.

16. Against these criteria, I find that:

- i. the author of the document is identifiable;
- ii. the specific personal information listed is not well known;
- iii. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents;
- iv. the information is not readily available from publicly accessible sources; and
- v. no public purpose would be achieved through release.

17. The release of the names of the individuals identified in the documents could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of some of the individuals other than the applicant would be an unreasonable disclosure of personal information and it is conditionally exempt under section 47F of the FOI Act.

Sections 47F - Public interest considerations

18. Section 11A(5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed *'unless (in the circumstances) access to the document at the time would, on balance, be contrary to the public interest'*.

19. 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 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.*

20. 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 Defence process, nor would it increase scrutiny or discussion of Defence activities.



21. While I consider that release of the material removed under section 47F of the FOI Act may be of some interest to the applicant, I consider this to be distinct from this being of interest to the public. 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 individuals whose personal details are contained within these documents from release to the public at large.


22. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors that I find particularly relevant to this request are that the 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 management function of an agency.*

23. It is for these reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and that, on balance, it is not in the public interest to release the personal information to you. Accordingly, I deem the relevant information exempt under section 47F of the FOI Act.

24. In coming to the above decision, I considered the factors outlined in section 11B(4) [irrelevant factors] of the FOI Act. None of these factors were taken into account in making my decision.

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tom. 
Date: 2023.04.24
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Tom 
Accredited Decision Maker
Environment and Engineering Branch