



DEFENCE FOI 005/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 4 July 2023, by the Department of Defence (Defence), for access to the following documents under the Freedom of Information Act 1982 (Cth) (FOI Act):

"I kindly request a copy of the signed Enhanced Space Cooperation Memorandum of Understanding between the Australian Defence Space Command and US Space Command"

[REDACTED]

[REDACTED]

[REDACTED]

FOI decision maker

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

Documents identified

4. I have identified one document as falling within the scope of the request.

Exclusions

5. 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

6. I have decided to:
 - a. partially release one document 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(a)(ii) [Defence of the Commonwealth]; and
 - b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

7. In making my decision, I have had regard to:
 - a. the terms of the request;

- b. the content of the identified documents in issue;
- c. relevant provisions of 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. response to consultation with United States Space Command.

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. Document one contains exempt material and information (eg. signatures) that do not relate to the request.
- 10. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents to you in an edited form.

Section 33(a)(ii) – Documents affecting national security, defence or international relations

- 11. Section 33(a)(ii) 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*

- 12. In regard 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.

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.*

13. In regard to 'defence of the Commonwealth', the Guidelines, at paragraph 5.34, refer to previous Administrative Appeals Tribunal (AAT) decisions which provide that the term includes:
- a. meeting Australia's international obligations;
 - b. ensuring the proper conduct of international defence relations;
 - c. deterring and preventing foreign incursions into Australian territory; and
 - d. protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.
14. I have identified material in the documents which, upon release, would cause, or could reasonably be expected to cause, damage to the defence of the Commonwealth. My decision to redact material was supported through consultation with the United States who advised information within the documents describe the scope and scale of the specific space-related mission areas in the Enhanced Space Cooperation Memorandum of Understanding (ESC MOU) potentially providing adversaries with a better understanding of our bilateral relationship which could then be used to cause disruption or harm to the relationship. This advice aligns with my decision to redact the information.
15. Accordingly, I am satisfied that the document is exempt under section 33(a)(ii) of the FOI Act.

FURTHER INFORMATION

16. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

Nathan

Digitally signed by
Nathan [REDACTED]

Date: 2023.08.15
09:20:53 +10'00'

Nathan [REDACTED]

Accredited Decision Maker

Joint Capabilities Group

Department of Defence