



FOI Reference: FOI 166/23/24

OAIC Reference: MR23/01291

FOI 166/23/24 STATEMENT OF REASONS UNDER SECTION 55G OF THE FREEDOM OF INFORMATION ACT

1. I refer to the request by [REDACTED] (the applicant), dated and received on 22 August 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

All documented paperwork listing all itemised and unredacted costings, of all itemised and unredacted starting flight airport, of all itemised and unredacted ending flight airport and of all itemised and unredacted person/s name/s on all those flights and also all itemised and unredacted reason/s for ALL those flights for MARLES and ALBANESE, starting from JUNE 1st 2022 until AUGUST 22, 2023.

Background

2.

3.

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 subject to the section 55G decision

5. Three (3) documents were created in accordance with section 17(1)(c) of the FOI Act and the basis that:
 - a. a written document can be produced containing the requested information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information; and
 - b. producing the written document did not substantially and unreasonably divert resources of the agency from its other operations.

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.

Revised Decision

7. I have decided to vary the original decision by:
- a. partially releasing the documents containing flight costing, start and end flight airport, and names on all the passengers on the flights 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;
 - b. refuse access to the reasons for those flights under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
 - c. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

8. In making my decision, I have had regard to:
- a. the terms of the request;
 - b. the content of the documents;
 - 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);
 - e. Australian Federal Policy Security Review; and
 - f. advice received from Subject Matter Experts from the Royal Australian Air Force (RAAF).

REASONS FOR DECISION

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

9. 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.
10. The documents contain exempt material and information that does not relate to the request.
11. 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 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

12. 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.*

13. Paragraph 3.94 of the Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(1):

...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...

14. To ensure that all reasonable steps have been taken in relation to this request, every reasonable avenue of locating potential documents for the reasons of the flights have been exhausted.
15. Searches for documents falling within scope of the request were undertaken of the relevant databases by the relevant area RAAF 34 Squadron (34 SQN). Personnel searched for documents using keywords specific to the request including 'reasons for flights', '01 June 2022 to 22 August 2023', 'Marles' and 'Albanese'.
16. 34 SQN have advised that searches returned no documents falling within scope of the request relating to reasons of the flights.
17. I am satisfied that all reasonable steps have been taken to locate the reasoning of the flights. I am satisfied that the documents cannot be found or do not exist, and refuse this section of the request under section 24A(1) of the FOI Act.

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

18. Section 33(a)(i) 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*

19. 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.*

20. Additionally, the Guidelines state:

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 (see definition in s 4(5)).*

21. Material contained in the documents is exempt under section 33(a)(i) of the FOI Act because its release would, or could reasonably be expected to, disclose patterns of travel, including destinations, departure times and the number of Australian Federal Police (AFP) members assigned to flights. Further, the release of this information could reasonably be expected to allow anticipation of future patterns of movement, thereby placing the personal safety of members of Parliament at risk. It is reasonable to expect that these individuals may be targets for adverse actions and therefore, disclosing their patterns of travel would increase any potential threat to these individuals. Additionally, threat actors may seek to identify and target locations frequented by AFP members and members of Parliament, in a way that poses a safety and security risk to other persons (including members of the public), property, operations and activities being conducted at those locations. This would adversely impact and cause damage to the security of the Commonwealth.

22. Accordingly, I am satisfied the material is exempt under section 33(a)(i) of the FOI Act.

FURTHER INFORMATION

23. Information of a similar nature to that the applicant is seeking is available here: <https://www.defence.gov.au/about/accessing-information/special-purpose-flights>.

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Kathryn [redacted]
A/g Director Freedom of Information
Associate Secretary Group
Department of Defence