



BP35990598

DEFENCE FOI 251/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 13 September 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

..... any emails or correspondence or documents pertaining to the transportation of Toto, the Prime Ministers female cavoodle on any RAAF vip flights

I wish to determine if Toto has ever been on the plane and if so on which occasions

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 have identified two (2) documents as falling within the scope of the request.

Exclusions

4. Personal email addresses, signatures, 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

5. I have decided to:
 - a. partially release two (2) 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 sections 33 [Documents affecting national security, defence or international relations]; 47E [Public interest conditional exemptions-certain operations of agencies] and 47F [Public interest conditional exemptions-personal privacy] of the FOI Act; and
 - b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

6. 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. Australian Federal Police Security Review.

REASONS FOR DECISION

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

- 7. 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.
- 8. The documents contain exempt material and information that does not relate to the request.
- 9. 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)(i) – Documents affecting the security of the Commonwealth

- 10. 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...*

- 11. 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:

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

- 12. 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)).

13. I have formed the view that the relevant 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 at risk the personal safety of members of Parliament. 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, and operations and activities being conducted at those locations. This would adversely impact and cause damage to the security of the Commonwealth.
14. Accordingly, I am satisfied the relevant information in the documents is exempt under section 33(a)(i) of the FOI Act.

Section 47E(d) –Public interest conditional exemptions – certain operations of agencies

15. Section 47E(d) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

16. The Guidelines, at paragraph 6.123, provide that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.

17. Names, positions/ranks and contact details of Defence employees are conditionally exempt under section 47E(d) of the FOI Act on the basis that Defence has procedures in place to manage contact with members of the public and answer queries, and that disclosure of those details would have a substantial adverse effect on the proper and efficient conduct of their operations.
18. Defence has designated channels and points of contact for receiving and dealing with public communications according to their subject and nature. I am satisfied that if the contact details of Defence personnel were made publicly available, it would have substantial adverse effects on the proper and efficient operation of existing public channels, including the ability for Defence to manage and respond with the public in an effective manner. Further, I am satisfied of a reasonable expectation that the

information could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of Defence personnel. Disclosure of staff contact information could reasonably be expected to prejudice the operations of Defence.

19. Accordingly, I am satisfied that the relevant information contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

20. Section 47F(1) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

21. The FOI Act shares the same definition of ‘personal information’ as the *Privacy Act 1988* (Cth). The Guidelines provide that:

6.128 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and*
- (b) whether the information or opinion is recorded in a material form or not.*

22. I found that the documents contain personal information of third party individuals. This includes their names and positions held within their respective agencies, which would reasonably identify the relevant third parties.
23. In my assessment of whether the disclosure of personal information is unreasonable, I considered the following factors in accordance with section 47F(2):
 - 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; and
 - d. the effect the release of the personal information could reasonably have on the third party.
24. I found that the specific personal information listed is not well known, individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents, and the information is not readily available from publicly accessible sources. Having regard to the nature and context of the information, I also consider disclosure, in the absence of consent, is also likely to cause significant concern to the relevant individuals.
25. Accordingly, I am satisfied that the relevant information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E(d) and 47F

26. Section 11A(5) of the FOI Act states:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

27. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

- (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*

28. In my view, disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

29. 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:

- the protection of an individual's right to privacy;
- the interests of an individual or a group of individuals;
- an agency's ability to obtain confidential information; and
- the management function of an agency.

30. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. As I have established above at section 47E(d), the release of the names of Defence personnel can reasonably be expected to adversely affect the proper and efficient conduct of the operations of Defence.

31. Furthermore, I find disclosure of the conditionally exempt under section 47F would compromise the personal privacy of those employees associated with Defence activities. While I accept there is a public interest in ensuring Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the robust advice, options and recommendations provided by other agencies as part of these processes.

32. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.

33. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors favouring disclosure, and that, on balance, it is contrary the public interest to release the information to you. Accordingly, I find that the information is conditionally exempt under sections 47E(d) and 47F of the FOI Act.

anthony [REDACTED]

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anthony [REDACTED]

Date: 2023.11.30 06:02:21 +11'00'

A. [REDACTED]

GPCAPT

Accredited Decision Maker

Air Force