



BP40840588

DEFENCE FOI 710/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 26 February 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“Following the recent release of Defence FOI 386/23/24 (refer email below and attached Decision/Statement of Reasons), please be advised that I wish to submit the following FOI request:

I kindly request:

1. *a copy of the February 2024 update of the Senate Estimates Brief / Chief of Air Force (CAF) Brief titled “ Unidentified Anomalous Phenomena/Unidentified Flying Objects” (previously identified as PDR No: SB23-000235), and*
2. *copies of emails (including copies of supporting file attachments) relating to the Air Force Senate Estimates Topic List of "Unidentified Anomalous Phenomena", or otherwise similarly identified as Unidentified Aerial Phenomena, Unidentified Flying Object (UFO/UFOs) for the date range of 27 October 2023 to 26 February 2024 (inclusive).”*



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 28 documents as falling within the scope of the request.
5. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

6. 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

7. I have decided to:

- a. release one (1) document in full;
- b. partially release twenty-seven (27) 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 sections 7 [exemption of certain persons and bodies]; 47C [public interest conditional exemptions – deliberative processes]; and 47E [public interest conditional exemptions – certain operations of agencies] 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 identified documents in issue;
 - c. relevant provisions of the FOI Act; and
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

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 document contains exempt and irrelevant material and information such as mobile telephone numbers that do 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 7 – Exemption of certain persons and bodies

12. Section 7(2A) of the FOI Act states:

(2A) An agency is exempt from the operation of this Act in relation to the following documents:

- (a) a document ... that has originated with, or has been received from, any of the following:*
 - (i) the Australian Secret Intelligence Service;*
 - (ii) the Australian Security Intelligence Organisation;*
 - (iii) the Inspector-General of Intelligence and Security;*
 - (iv) the Office of National Intelligence;*
 - (v) the Australian Geospatial-Intelligence Organisation...*
 - (vi) the Defence Intelligence Organisation;*
 - (vii) the Australian Signals Directorate*

- (b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.

13. Specifically, paragraph 2.21 of the Guidelines state:

Responding to access requests if an exemption applies

2.21 Where an agency is exempt in whole from the FOI Act under s 7, it is not obliged to respond to requests for access to documents or amendment or annotation of personal records. It is nevertheless good administrative practice for an exempt agency to reply to an applicant stating that the agency is not subject to the FOI Act.

14. I note that material contained within the scope of the FOI request falls within the jurisdiction of section 7(2A) of the FOI Act. Accordingly, this material is exempt from disclosure..

Section 47C – Public interest conditional exemptions - deliberative processes

15. Section 47C(1) of the FOI Act states:

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
 - (a) an agency; or
 - (b) a Minister; or
 - (c) the Government of the Commonwealth.

16. Section 47C(2)(b) of the FOI Act provides that deliberative matter does not include purely factual material. The Guidelines, at paragraph 6.73, state that:

[p]urely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

17. I considered the question of whether the information was purely factual. In relation to section 47C considerations under the FOI Act, I have taken into account the guidelines which clarify 'purely factual material' that would not be regarded as deliberative matter as:

- a. content that is merely descriptive;
- b. incidental administrative content;
- c. procedural or day to day content;
- d. the decision of conclusion reached at the end of the deliberative process;
- e. matter that was not obtained, prepared or recorded in the course of, or for the purpose of, a deliberative process.

18. Upon examination of the document, I have identified deliberative matter – that is in the nature of, or relating to either opinion, advice or recommendation that has been obtained, prepared or recorded; or a consultation or deliberation that has taken place, in the course of, or for the purpose of a deliberative process of Defence.

19. Accordingly, I am satisfied that the document contains matter that meets the definition of deliberative material, communicating opinion or recommendations gathered through consultation.
20. Therefore, I have decided that the relevant information is conditionally exempt under section 47C of the FOI Act.

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

21. Section 47E(c) 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:

- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.*

22. The Guidelines provide, at paragraph 6.113, that:

Where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely, that:

- (a) an effect would reasonably be expected following disclosure*
- (b) the expected effect would be both substantial and adverse.*

23. I find that the document specified relates to the management of personnel – including the broader human resources policies and activities.
24. Upon assessment of the document, I found that it contained information concerning the management and behaviour of personnel including the names and contact details of Defence personnel.
25. The release of material identifying staff details in documents relates to Defence's management of personnel in regards to the maintenance of occupational health and safety standards.
26. In the case of '*ABK*' and *Commonwealth Ombudsman* [2022] AICmr 44, the Information Commissioner (IC) accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.
27. I am satisfied there is a reasonable expectation that the names and contact details of Defence personnel could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of Defence personnel. Disclosure of names, email addresses and phone numbers could, therefore, reasonably be expected to substantially adversely impact the staff management function of Defence in maintaining workplace health and safety standards.
28. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(c) of the FOI Act.

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

29. 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.

30. 13. 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.

31. In the case of 'ABK' and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner (IC) found that where the direct email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to reasonable expectation that the release of direct contact details would undermine the operation of established channels of communication with the public. Further, the IC accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.

32. I am satisfied that were the contact details of Defence personnel or group mailboxes made publicly available, it would have substantial adverse effects on the proper and efficient operation of existing public communication channels. Further, I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner that adversely affects the health, wellbeing and work of Defence personnel. Disclosure of names, email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.

33. The Guidelines provide, at paragraph 6.120, that I should consider whether disclosure of the information 'would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient.' Given that the direct contact details within the documents are not publicly available and that more appropriate communication channels are already available, I am satisfied that release of the information could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.

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

Public interest considerations - section 47C and 47E

35. 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.

36. 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;*
- (d) allow a person to access his or her own personal information.*

37. 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).
38. 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; and
 - the management function of an agency.
39. I consider that there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner. On this occasion, however, I believe that there is a stronger public interest in maintaining the confidentiality of deliberative material contained within the documents. This information is still under consideration by Government which ultimately allows Defence to undertake its business in an expected and lawful manner.
40. It is also in the clear public interest that Defence efficiently and productively operate with regard for the health and wellbeing of its personnel. As I have established above, the release of the direct contact details of Defence personnel can reasonably be expected to prejudice the management functions of Defence. There are existing communication channels and processes to enable the efficient and appropriate liaisons with the public. Accordingly, the direct contact details of Defence personnel should not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.
41. 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.

42. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under section 47C, 47E(c) and 47E(d) of the FOI Act.

andrew

Digitally signed by
andrew. [redacted]

Date: 2024.05.30 13:55:52 +09'30'

A. [redacted]
Group Captain
Accredited Decision Maker
Air Force