



DEFENCE FOI 442/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] dated and received on 4 December 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“I’d like to submit a Freedom of Information request regarding some environmental and health and safety data relating to the DARC radar project under development in Exmouth. Specifically, I would be grateful if you could provide:

• The peak pulse power output, pulse width, pulse repetition-time, average power output and duty cycle data of DARC’s transmission antennas (both individually and as a group) in the main beam. (The power outputs should be specified preferably in microwatts per square centimetre, but other measurements are acceptable.) • The peak pulse power output, pulse width, pulse repetition-time, average power output and duty cycle data of DARC’s transmission antennas (individually and as a group) in the sidelobes, backlobes and other radiation output besides the main beam. (The power outputs should be specified preferably in microwatts per square centimetre, but other measurements are acceptable.) • The full azimuth angle range of operation of DARC’s transmission antennas • The number, position, colour and power of light units required for DARC’s operation”

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 have identified five (5) documents as falling within the scope of the request.

Exclusions

6. Duplicates of documents are excluded from this request. Defence has only considered final versions of documents.

Decision

7. I have decided to:
- a. release one document in full;
 - b. partially release one document in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act;
 - c. refuse access to three documents on the grounds that the documents are considered exempt under section 33(a)(iii) [Documents affecting national security, defence or international relations] of the FOI Act; and
 - d. 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;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. advice received from consultation with foreign entity.

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 being released in part contain exempt and irrelevant material that does not relate to the request.
11. In the case of documents being refused in full, I have decided to refuse access to the documents as they would be meaningless and of little or no value once the exempt material is removed.
12. In relation to the documents being released in part, 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.
13. Where whole pages are considered to be exempt in full or irrelevant to the scope of the request, these pages have been removed from the released document pack.

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

14. Section 33(a)(iii) 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:*
- (iii) the international relations of the Commonwealth*

15. 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.

...

5.25 ‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency.

...

5.32 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.*

16. In regard to ‘international relations’, the Guidelines provide at paragraph 5.39:

The phrase ‘international relations’ has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

17. I find that disclosure of the documents exempted under section 33(a)(iii) of the FOI Act would cause, or could reasonably be expected to cause, damage to the international relations of the Commonwealth. The documents contain information that has been shared between governments under agreement and information that has been shared and prepared for specific purposes that if disclosed would damage these relationships.
18. The documents within the scope of this request also contains information which, if released, could reasonably be expected to damage the international relations of the Commonwealth. The documents contain information communicated to Australia by foreign governments and their officials under the expectation that it would not be disclosed. The release of such information could harm Australia's international standing and reputation. It could reasonably be expected to limit the Commonwealth's ability to deal with those countries in relation to similar matters in the future.
19. If divulged, I find that the relevant information would cause a loss of trust and confidence such that foreign officials would be less willing to engage with the Australian Government. Accordingly, the disclosure of such information could impact Australia's good working relations with those foreign government as well as inhibit the flow of confidential information.
20. I am satisfied that three documents are exempt under section 33(a)(iii) of the FOI Act.



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Accredited Decision Maker
Joint Capabilities Group
Department of Defence