



DEFENCE FOI 575/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 22 January 2025 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

...any briefing documents prepared for Richard Marles ahead of his trip to Kiribati and any documents received by his office following the trip with a date range of December 1 2024 to current.

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

Exclusions

6. 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. partially release the 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
 - a. 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 the Department of Foreign Affairs and Trade (DFAT).

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 identified as being released in part contain exempt and irrelevant material that does not relate to the request.
- 11. 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.
- 12. 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) – Documents affecting national security, defence or international relations

- 13. 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

...

(iii) the international relations of the Commonwealth.

- 14. 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...

15. In regard to 'security of the Commonwealth', the Guidelines, at paragraph 5.30, broadly refers to:

the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests.

16. The term 'damage' in regard to the security of the commonwealth is described in the Guidelines at paragraph 5.32 to have 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.

17. In regard to 'security of the Commonwealth', the Guidelines provide at paragraph 5.30:

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)).

18. I have identified material in the documents which, upon release, could reasonably be expected to cause damage to the security of the Commonwealth by aiding adversaries access to further classified information.

19. I have placed weight on the purpose of the documents – being to provide classified advice between diplomatic Governments - in making my assessment. In this regard, I have considered the Guidelines at paragraph 5.34 where it states:

It is well accepted that securing classified government information forms part of the security of the Commonwealth.

20. The documents are classified, and highly sensitive in nature as they provide detail of diplomatic cables, including their reference numbers. This material is closely held within the Commonwealth, and if disclosed, would, or could reasonably be expected to damage, and adversely impact the security of the Commonwealth.

21. The Australian Government's Protective Security Policy Framework, maintained and published online by the Department of Home Affairs states that compromise of information confidentiality of security classified material would have high, or extreme business impact, and be expected to cause damage, or serious damage to the national interest, organisations or individuals. I have placed weight on the protection of classified documents from disclosure being necessary as part of maintaining the security of the Commonwealth.
22. 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.
23. 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 talking points and key background information that framed the Governments engagements with the Government of Kiribati.
24. I am of the view that making public content relating to briefing material for meetings with foreign counterparts, would consequently reveal sensitive information about bilateral relationships, defence priorities and strategies that could damage bilateral relationships and national security. Further, if this information were to be released by Defence, it would likely cause damage to international relations of the Commonwealth by diminishing the confidence partners have in Australia as a reliable recipient of their confidence, making those partners less willing to cooperate with Australian agencies in the future.
25. Accordingly, I am satisfied that the information is exempt under sections 33(a)(i) and 33(a)(iii) of the FOI Act.

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

26. 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.
27. The Guidelines, at paragraph 6.115, provide that:

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

28. 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.
29. I am satisfied that were the contact details of Defence personnel 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 which adversely affects the health, wellbeing and work of Defence personnel. Disclosure of direct contact details could, therefore, reasonably be expected to prejudice the operations of Defence.
30. I have also exempted from disclosure material within the scope of this request that would reveal Defence's internal processes when preparing a briefing pack for Government. In assessing whether disclosure of this information could be expected to adversely affect the operations of Defence, I consider that keeping these internal processes confidential is essential to prevent potential manipulation to protect sensitive information related to Australia's international relations. I am of the view that disclosure would prejudice Defence operations by undermining its ability to prepare fulsome advice for Government, which is essential when informing effective decision making related to diplomatic engagement. I am satisfied that disclosure could reasonably be expected to have an effect on the efficient operations of the Agency, the Minister and the Commonwealth.
31. Further, I have also identified material which relates to an ongoing tender process for a project involving a foreign government where disclosure would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the agency's operations. The material contains sensitive operational details that are integral to the live procurement process and remain under active consideration. Disclosure at this time could undermine the integrity of the tender process, compromise the agency's ability to engage effectively with international partners, and damage stakeholder confidence in the agency's handling of sensitive bilateral initiatives. While some aspects of the project may be publically announced or released through formal channels at a later stage, premature disclosure would risk disrupting coordinated planning, internal deliberations, and stakeholder trust, ultimately undermining the agency's ability to deliver its projects effectively.
32. The Guidelines provide, at paragraph 6.112, 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 that do not prejudice the efficient operations of Australian Government posted staff and their support networks, 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.

33. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

34. 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).

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

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

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

36. I found that the documents contain personal information of foreign Government members and officials.

37. 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.

38. I found that the specific personal information listed is not well known and is not readily available from publicly accessible sources.

39. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E and 47F

40. 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.

41. 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.

42. 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).
43. Paragraph 6.233 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 personnel management function of an agency; and
 - the management and personnel management function of an agency.
44. 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, the release of the names and phone numbers of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of Defence personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.
45. Additionally, while I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of the material contained in the documents, particularly those that refer Defence's internal processes which allow Defence to undertake its operational activities in an expected and lawful manner.
46. Furthermore, I am of the view that releasing personal details would violate individual's rights to privacy and impede the proper and efficient personnel management functions of Defence.
47. 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.
48. 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 sections 47E and 47F of the FOI Act.

FURTHER INFORMATION

49. The documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.

50. The documents matching the scope of this request contained dissemination limiting markers (DLM). Where documents have been approved for public release, the DLM has been struck through.



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