



DEFENCE FOI 616/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

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

Email Correspondence from the NSW Rural Fire Service held by the Security and Estate Group concerning RFS their use – both continued and existing – of the Richmond RAAF base.

Timeframe: 2019 – present

Background



FOI decision maker

5. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

6. I have identified 13 documents as falling within the scope of the request.
7. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

8. Mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents are excluded from this request. Defence has only considered final versions of documents.
9. In addition, there is material contained in the documents that is not from NSW Rural Fire Service. This material has been excluded as it does not form part of the scope of request. Where documents are from Defence, this has been included for completeness.

Decision

10. I have decided to:

- a. partially release 13 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

11. 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 NSW Rural Fire as part of consultation.

REASONS FOR DECISION

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

12. 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.
13. The documents identified in the schedule of documents as being released in part contain exempt and irrelevant material such mobile phone numbers that do not relate to the request.
14. 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.
15. 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 national security, defence or international relations

16. 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

17. 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.

...

5.32 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.*

18. 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)).*

19. Upon examination of the documents, I have identified material, which, upon release, could reasonably be expected to cause damage to the security of the Commonwealth by making public detailed maps of a secure Defence base. The exempt material contains sensitive information regarding infrastructure, in which the release could potentially allow adversaries with hostile intentions to exploit Australian Defence Force capabilities.

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

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

21. 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.

22. 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.

23. 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) of the FOI Act. 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.
24. 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 names, email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.
25. The documents contain group inbox details, the release of which would undermine the operation of established channels of communication with the public. I am satisfied that the release of this information would have a substantial adverse effect on the proper and efficient operation of existing public communication channels. Disclosure of internal email inbox details could, therefore, reasonably be expected to prejudice the operations of Defence and that of the Commonwealth.
26. 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 the nature of the information, I am satisfied that release could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.
27. 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

28. 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).

29. 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:

- (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.*

30. I found that the information contained personal information of other persons. This includes their names, phone numbers and email addresses which would reasonably identify a third party.
31. 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;
 - d. the effect the release of the personal information could reasonably have on the third party; and
32. I found that the specific personal information of individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the document and the information is not readily available from publicly accessible sources. In addition, this exemption was supported by the consultation received from the third party.
33. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E and 47F

34. 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.

35. 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;

36. 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).
37. 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 interests of an individual or a group of individuals; and
 - the personnel management function of an agency.
38. While I accept there is public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, Defence has an obligation to protect the personal information of third parties and the names and contact details of its personnel. I find that the public interest in protecting this information far outweighs the public interest in releasing this information.
39. 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.
40. 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.

Digitally signed by

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Accredited Decision Maker
Security and Estate Group
Department of Defence