



**Australian Government**

**Department of Defence**

Reference: BK1623938

**FOI 056/18/19 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by [REDACTED], under the *Freedom of Information Act 1982* (FOI Act), for access to:

*Climate scan reports prepared during calendar year 2017*

*I am not seeking personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, I am excluding drafts, duplicates, emails, media documents and documents which are already public. Only final versions of documents are in scope.*

**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 identified two documents as matching the description of the request.

**Decision**

4. I have decided to:
- a. partially release two 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 section 33 [documents affecting national security, defence or international relations], and/or section 47E [Public interest conditional exemptions – certain operations of agencies] of the FOI Act.

**Material taken into account**

5. In making my decision, I had regard to:
- a. the terms of the request;
  - b. the content of the identified documents in issue;
  - c. relevant provisions in 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 from the Director General Workforce Planning.

**Reasons for decision**

**Section 33 – Documents affecting national security, defence or international relations**

6. Section 33(a)(ii) of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the defence of the Commonwealth.

*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;*
- (ii) The defence of the Commonwealth; or*
- (iii) The international relations of the Commonwealth;*

7. The documents identified in scope of this request, contain information that details the nature of Defence capabilities that, if released, could reasonably be expected to cause damage to the defence of the Commonwealth.

8. In regards to the terms, 'could reasonably be expected to', the Guidelines specify:

*Paragraph 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*

9. The Guidelines explain that 'The FOI Act does not define 'defence of the Commonwealth'. Previous Administrative Appeals Tribunal (AAT) decisions indicate that the term includes:

- *meeting Australia's international obligations*
- *ensuring the proper conduct of international defence relations*
- *detering and preventing foreign incursions into Australian territory*
- *protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

10. I found certain sections of the Climate Scan reports to contain information that outlines the human capabilities of the Australian Defence Force. If released, it could allow nations hostile to the Commonwealth's interests to use counter measures to hinder Defence activities and operations, which would prejudice its effectiveness.

11. The information, if released, would give an insight into the level of engagement and risk Defence may apply as a reaction to training operations or conflict situations. The adverse effect resulting from release would prejudice Defence in its effectiveness to undertake military operations required by the Government's overall national defence strategy.

12. Particular consideration has been made regarding the mosaic effect of releasing the information that may on its own appear to be insignificant. However, when combined with other publicly available information, and material in the document that is being released, the information would divulge specific Defence capabilities.

13. Taking the above into account, I find that release of the information could reasonably provide an adversary with a tactical advantage and diminish the capability of the Australian Defence Force to defend the Commonwealth. Therefore, I find part of the information in the Climate Scan documents exempt under section 33(a)(ii) of the FOI Act.

#### **Section 47E – Public interest conditional exemption-certain operations of agencies**

14. The Climate Scan reports are a Defence management tool that inform ongoing performance issues and gauge internal working patterns and capabilities of the Australian Defence Force. I consider the material (as a package) is sensitive Defence survey material and find it exempt under sections 47E(c) and 47E(d) of the FOI Act.

15. Upon examination of the documents, I identified survey results where the number of respondents and headcount of some areas were so small that it is possible to identify

individual respondents. Disclosure of this information could reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by the Commonwealth. The data also divulges human capabilities that could have an adverse effect on the proper and efficient conduct of Defence operations.

16. Section 47E(c) and 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: ... (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency; (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

17. The Office of the Information Commissioner's Guidelines advise that, where the document relates to management of personnel, the decision maker must address whether:

- an effect would reasonably be expected following disclosure
- the expected effect would be both substantial and adverse.

18. I am satisfied that the expected effect of disclosing the exempt material could have a substantial adverse effect on the management of personnel; in that once the information was made publically available it could prejudice staff willingness to participate in future survey responses if anonymity cannot be assured.

19. I am also satisfied that release of the documents could have a substantial adverse effect on the proper and efficient conduct of the Australian Defence Force operations as adversaries could use the data to analyse Defence responses in certain operations.

20. I have decided to conditionally exempt the documents in part, pursuant to sections 47E(c) and 47E(d) of the FOI Act.

21. Section 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest factors are outlined below.

#### **Public interest consideration**

22. Section 11B(3) states factors favouring access to the document in the public interest include whether access to the document would do any of the following:

- promote the objects of this Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

23. I acknowledge that the release of the documents, without the exempt material redacted under section 47E(c) or 47E(d), would promote the objects of the FOI Act, through facilitating and promoting greater public access to government information.

24. On the other hand, I do not consider that release of the information would inform debate on a matter of public importance, promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.

25. In contrast, I consider that the ability to maintain anonymity of personnel who participate in future climate scan surveys to be in the public interest. The surveys are initially utilised to assist with individual development conversations with supervisors. Disclosure of

the information that is broken down to particular areas of the Department where personnel could be identified as respondents would not be in the public interest.

26. I also consider that disclosure of the documents could reasonably be expected to affect the willingness of people to provide survey responses which, in turn, would have a substantial adverse effect on the way Defence manage and assess of the agency's operations and its personnel.

27. Release of the information would also prejudice Defence's ability to assess and manage its human capabilities which would compromise the significance of capturing this data. The data forms part of a significant Defence management tool that reports on abilities of capabilities.

28. I consider the public interest is better served in this case by maintaining the anonymity of personnel and suppressing Defence's human capabilities and probable reactions in operational situations from other nations. Therefore, on balance, I have decided the documents to be exempt in part under sections 47E(c) and 47E(d) of the FOI Act.

29. The factors listed in section 11B(4) [Irrelevant factors] were not taken into account when making my decision.

#### **Further information**

30. Section 22 of the FOI Act allows an agency to give access to an exempt document if it is possible to prepare an edited copy of the document, modified by deletions. In accordance with section 22(2) of the FOI Act, Defence has redacted the documents to allow the applicant access to an edited copy without revealing any of the exempt material in the Climate Scan reports.

31. As the documents are approved for public release the dissemination limiting markers have been struck through.

32. In our letter dated 27 August 2018, after deducting the free decision making time, the department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay charges for the administration of your request on 3 September 2018; an invoice for the preliminary assessment deposit of [REDACTED] was subsequently paid on 6 September 2018.

33. The remaining balance is the difference between actual charges and the deposit you have already paid. Accordingly you are required to pay [REDACTED] in order to finalise your request. Please find attached at Enclosure 1 an invoice for the balance of charge owing.

**Justine.Nordin**

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Date: 2018.10.15 12:20:43  
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Mrs Justine Nordin  
Accredited Decision Maker  
Governance and Reform Division  
Associate Secretary Group

Enclosure 1: Balance of charges invoice