



FOI 127/18/19 - 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 documents. FOI 127/18/19 request reads as follows:

"Copies of permits granted for the export of military equipment from Australia to the United Arab Emirates from 1 January 2016 to 31 December 2016."

2. The Department of Defence excludes personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers contained in documents that fall within the scope of a FOI request unless you specifically request such details. Defence also excludes duplicates of documents and documents sent to or from you. Furthermore, Defence only considers final versions of documents.

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 identified 22 documents as matching the description of the request.
5. The decision in relation to each document is detailed in a schedule of documents.
6. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

Decision

7. I have decided to:
 - a. partially release 22 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 47G [Public interest conditional exemption – business] of the FOI Act;
 - b. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

8. 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; 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 47G – Business information

9. In examining the documents I identified business information of a number of third parties.
10. Under section 47G of the FOI Act, information is conditionally exempt if it discloses information *‘concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
 - a. *Would or could reasonably be expected to, unreasonably affect the person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs...’*
11. This provision requires consideration of the reasonable expectation, rather than certainty, to be applied in deciding whether disclosure would cause the consequences specified.
12. This application of this exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that disclosing information related to the export activities of third parties could adversely affect the business affairs and profitability of those third parties.
13. As such, I am satisfied that this information contained in these documents is conditionally exempt under section 47G of the FOI Act.

Public interest considerations – section 47G

14. Section 11A (5) of the FOI Act provides that if a document is conditionally exempt, it must be disclosed *‘unless (in the circumstances) access to the document at the time would, on balance, be contrary to public interest.’*
15. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines, together with a range of factors that favour access to a document set out in section 11B(3)[public interest exemptions – factors favouring access] of the FOI Act.
16. Although I considered that disclosure may increase scrutiny of Defence’s administration of export control regulations, I found that disclosure of information related to the activities of commercial entities that has been provided to the Commonwealth could reasonably be expected to prejudice the Commonwealth’s ability to obtain similar information in the future.
17. Defence relies on the full disclosure of all information relevant to proposed exports of controlled goods in order to properly assess export permit applications against Australia’s international obligations. This requires applicants to divulge information on their export markets, business partnerships, customers and the types of goods they are seeking to export which they may not otherwise make public.
18. On balance, I have found that it would be contrary to the public interest to release the information considered conditionally exempt under section 47G of the FOI Act.

StuartSpence

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Stuart Spence

Accredited Decision Maker

Strategic Policy and Intelligence Group