



**FOI 146/17/18 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:

*"all communications to and from the Department of Defence's media team on October 11 and 12 2017 and all related documents created that are related to APT-ALF hacker and the presentation given by ASD employee Mitchell Clarke in Sydney at the Australian Information Security Association (AISA) National Conference."*

*excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents and documents sent to or from the applicant.*

**FOI decision maker**

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

**Documents identified**

3. I identified 25 documents as matching the description of the request.
4. The decision in relation to each document is detailed in a schedule of documents.
5. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

**Decision**

6. I have decided to:
  - a. release five documents in full;
  - b. refuse access two documents in accordance with section 7 [exemption of certain persons and bodies] of the FOI Act;
  - c. partially release 18 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 47F [public interest conditional exemptions-personal privacy] and section 7 [exemption of certain persons and bodies] of the FOI Act; and
  - d. 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**

7. 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 Defence Media.

### **Reasons for decision**

#### **Section 7 – Exemption of certain persons and bodies**

8. Section 7(2A) of the FOI Act (supplemented by Schedule 2, Part II) lists agencies that are exempt from the operation of the Act in relation to particular types of documents. The exemption extends to a part of a document that contains an extract from or a summary of an intelligence agency document, or a defence intelligence document.

9. Nine documents matching the scope of the request identified information originating to or from an agency exempt from the operations of the Act, as identified in section 7(2A)(a). Accordingly, I have decided to refuse access to two documents under section 7(2A) of the FOI Act and partially release seven documents with deletions.

#### **Section 47F – Personal Privacy**

10. Upon examination of the document, I identified information, specifically names and contact details of individuals other than the applicant.

11. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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.

12. I found that the:

- a. specific personal information listed is not well known, and
- b. information is not readily available from publicly accessible sources.

13. The release of the names and contact details of these individuals identified in the document could reasonably be expected to cause harm to their privacy. I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and is conditionally exempt under section 47F(1) of the FOI Act.

#### **Public interest considerations – Section 47F(1)**

14. I have found that the identified documents are conditionally exempt under section 47F(1) of the FOI Act. Section 11A (5) provides that if a document is conditionally exempt, it must be disclosed unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

15. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factor is that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource.

16. However, the 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).

17. Paragraph 6.22 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 or harm:

- a. the protection of an individual's right to privacy
- b. the interests of an individual or group of individuals.

18. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47F(1) of the FOI Act.

19. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.



Anush Avakian  
Accredited Decision Maker  
Capability Acquisition and Sustainment Group

27 November 2017