



Australian Government

Department of Defence

Reference: BN5108464

FOI 274/18/19 - STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

"...any documents, reports and/or briefing material containing the location of training and/or guidance of any Saudi Arabian defence personnel in Australia over the past two years (2017-2018)."

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 the applicant specifically requests such details. Defence also excludes duplicates of documents 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 15 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. release one document in full;
 - b. 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 section 33(a)(i) [Documents affecting national security], section 47F [public interest conditional exemptions-personal privacy] and/or section 47G [public interest conditional exemptions-business] of the FOI Act.
 - c. deny access to one document in accordance with section 33(a)(i) [Documents affecting national security] 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

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;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
 - e. Consultation with third parties whose information is contained within the documents; and
 - f. Consultation with International Policy Division within Defence.

Reasons for decision

Section 33(a)(i) & 33(a)(ii) of the FOI Act

9. Section 33 of the FOI Act exempts a document if its disclosure under the Act would or could reasonably be expected to, cause damage to the security, defence or international relations of the Commonwealth, or information that would divulge information or matter communicated in confidence by or on behalf of a foreign government.

10. The Guidelines state:

Security of the Commonwealth

5.29 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)).*

11. In regard to the defence of the Commonwealth, the Guidelines state:

Defence of the Commonwealth

5.34 The Act does not define 'defence of the Commonwealth'. Previous 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.* Upon examination of the documents, I found that a number of documents contained sensitive information relative to meeting Australia's international obligations, ensuring proper conduct of international Defence relationships and protecting Australia's national security. If this material was to be released, it could be used by an adversary to identify future capability and allow them to attempt to compromise that capability.

12. In deciding that material was exempt under section 33 of the FOI Act, I also considered the mosaic theory. The Guidelines state that:

5.39 When evaluating the potential harmful effects of disclosing documents that affect Australia's national security, defence or international relations, decision makers may take into account not only the contents of the document but also the intelligence technique known as 'mosaic theory'. This theory holds that individually harmless pieces of information, when combined with other pieces, can generate a composite – a mosaic – that can damage Australia's national security, defence or international relations. Therefore, decision makers may need to consider other sources of information when considering this exemption¹.

5.40 The mosaic theory does not relieve decision makers from evaluating whether there are real and substantial grounds for the expectation that the claimed effects will result from disclosure.

13. I found that a portion of the documents contained information that, if disclosed, may add to what is already known, or already in the public domain. This could lead to an adversary applying mosaic theory to information relating to this Defence capability and ultimately undermine its effectiveness.

14. Taking the above into account, I consider that disclosure of the material would, or could reasonably be expected to, cause damage to the security and/or defence of the Commonwealth. Accordingly, I consider the material to be exempt under sections 33(a)(i) and/or 33(a)(ii) of the FOI Act.

Section 47F - Personal privacy

Conditional Exemption - Section 47F(1) - Personal Privacy

15. Upon examination of the documents, I identified personal information, such as signatures names and education details belonging to individuals other than the applicant.
16. 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.
17. I found that the:
- a. specific personal information listed is not well known;

- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents; and
- c. information is not readily available from publicly accessible sources.

18. The release of the signatures of individuals identified in the document could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations – Section 47F(1)

- 19. 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.
- 20. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors are that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and it would allow the applicant access to their own personal information.
- 21. However, the disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.
- 22. 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; and
 -
 - k. the interests of an individual or group of individuals.
- 23. 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.
- 24. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

Section 47G

- 25. Subsection 47G conditionally exempts a document if its disclosure under the FOI Act would disclose 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 adversely affect the business or commercial or financial affairs; or

b. could reasonably be expected to prejudice the future supply to the Commonwealth.

26. I note that the use of the word 'could' in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself.

27. Upon examination of the material, I identified information unique to the commercial affairs of a business. I found that this information is related to the business affairs of a lawful business of a third party.

28. I determined that this information is not publicly available and consider should the material be released, it could reasonably be expected to have an adverse effect on commercial and financial business affairs of a third party. I also consider that if this material is released against future authors' wishes it could decreased their cooperation with Defence.

29. Consequently, I have decided that the material is conditionally exempt under section 47G of the FOI Act.

Public interest considerations – section 47G

30. In determining whether to release the information conditionally exempt under section 47G, I considered the Guidelines together with a range of factors that favour access to a document set out in sub-section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

31. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to the public interest. Specifically, I considered if disclosure of the documents would:

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

32. I consider that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. I consider, however, the disclosure of the material would not increase public participation in Government processes. Further, I consider that disclosure of the information would also not increase scrutiny or discussion of Government activities.

33. 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 public interest in maintaining the confidentiality of the material. In addition, it could reasonably be expected that disclosure of the material could harm the interests of an individual or group of individuals. It could also reasonably be expected to prejudice and agency's ability to obtain similar information in the future.

34. Furthermore, I consider that release of the information could harm the commercial and financial affairs of a third party and that the harm to the third party's activities and interests outweighs any benefits that may be gained by public scrutiny.

35. 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 sections 47G of the FOI Act.

Third party consultation

36. I decided to consult with third parties regarding their information which was contained in the documents. In response to this consultation, some of the third parties have objected to the release of their business/personal information. I do not agree with all of the objections.

37. The department is required to advise the third parties of my decision. Documents will be provided when all review rights have been exercised, or it is apparent that the third parties accept my decision.

Section 22 (where documents are being denied in full)

38. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. It is my view that it would not be reasonably practicable to prepare an edited copy of the document without disclosing exempt material. Doing so would leave only a skeleton of the former document that would convey little of its content or substance.

Further Information

39. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.



Jarrod Howard
Accredited Decision Maker
Strategic Policy and Intelligence Group

1 May 2019