



Reference: AF33449713

FOI 463/17/18 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:

- "1. SKM (2001a) *Environment and Heritage Strategy/Implementation Plan for RAAF Base Tindal*. DR04674, SKM;
2. SKM (2001b) *RAAF Base Tindal, Environmental Management Plan*. DR04674, SKM;
3. URS (2002) *Fire Station Contamination Investigation RAAF Base Tindal*. As described in ERM (2005);
4. ERM (2005) *Stage 1 Environmental Investigation RAAF Base Tindal, Northern Territory*. 0028812. ERM, Spring Hill;
5. ERM (2007a) *Landfill/Burial Sites Stage 1 Investigation NT/K RAAF Base Tindal*. 0042239 RAAF Tindal Stage 1. ERM, Spring Hill;
6. ERM (2007b) *Stage 1 and 2 Environmental Investigations NT/K RAAF Base Tindal*. 0042239. ERM, Spring Hill;
7. GHD (2008) *RAAF Base Tindal Stage 2 (Part II) Environmental Investigation*. 31/21887/146637. GHD, Darwin;
8. *Human Health and Screening Ecological Risk Assessment, Fire Training Area, RAAF Base Tindal, Northern Territory/Kimberley*. D11029. AECOM, Gordon;
9. *Stage 2 (III) Environmental Investigation RAAF Base Tindal*. D11029. AECOM, Darwin;
10. *Water Quality Investigations FY 08/09 RAAF Base Tindal*. D1112501. AECOM, Darwin;
11. *Groundwater and Surface Water Monitoring Plan RAAF Base Tindal Northern Territory/Kimberley Region*. D11029. AECOM, Darwin;
12. GHD (2011) *Report for AZ4561 Environmental Investigation of Fire Training Areas RAAF Base Tindal*. GHD, Brisbane;
13. GHD (2012) *Report for RAAF Base Tindal, Remediation Action Plan – Fire Training Area and Fire Station*. 21/21200/210577. GHD;
14. Golder (2015) *Stage 2 Contamination Assessment RAAF Base Tindal – New Air Combat Facilities*. 1416824-011-R-RevA. Golder Associates, Milton;
15. Jacobs (2015) *RAAF Base Tindal – New Air Combat Capability, Investigation of potential contamination in Buildings 521, 530 and 540, 75 Squadron*. IH065600-2904-NP-RPT-0001. Jacobs, Melbourne;
16. EES (2016) *Targeted Environmental Assessment for PFAS in Soil and Groundwater at RAAF Tindal*. 716030. Environmental Earth Sciences, Newstead;

17. GHD (2016b) *Defence PFAS Environmental Management Preliminary Sampling Program*. GHD, Darwin;

18. GHD (2016a) *NT Defence Environmental Monitoring Program - RAAF Base Tindal Annual Report 2016*. 43/22491. GHD, Darwin; and

19. GHD (2017) *RAAF Base Tindal Drainage Line Soil Sampling Summary of Results*. 4322576- 97135. GHD, Darwin."

Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request.

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 35 documents as matching the description of the request.
4. One of the identified documents, Item 17, is a publicly available document and as such has not been considered under this decision. A link to this document is provided at paragraph 27.
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 two documents in full;
 - b. Partially release 24 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(a)(i) [Documents affecting the security of the Commonwealth], 33(a)(iii) [Documents affecting the international relations of the Commonwealth] and/or 47G [Public interest conditional exemptions - Business] of the FOI Act;
 - c. Refuse access to eight Items [1, 3, Appendix B, Appendix H and Appendix L of Item 9, and Appendix A, Appendix B and Appendix C of Item 14] of the request under section 24A(1)(b)(ii) [Requests may be refused if documents cannot be found, do not exist or have not been received] 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); and
 - e. advice received from officers within the PFAS Taskforce, Estate & Infrastructure Group (E&IG), Royal Australian Air Force (RAAF) and third parties.

Reasons for decision

Section 33 - Documents affecting national security, defence or international relations

9. Section 33 exempts documents that affect Australia's national security, defence or international relations. Paragraph 5.24 of the FOI Guidelines states that a document is exempt if disclosure:

- a. *would, or could reasonably be expected to, cause damage to the Commonwealth's security, defence or international relations; or*
- b. *disclosure would divulge information communicated in confidence to the Commonwealth by a foreign government, an agency of a foreign government or an international organisation*

10. Upon examination I found documents that contain detailed maps of Defence establishments and infrastructure. If this material was to be released, it would compromise Australia's ability to defend itself against future adversaries.

11. Further to the above, I also identified information pertaining to other governments' defence forces that if released, could undermine the trust relationship necessary for the continued operation of the Australian Defence Force in current and future conflicts. An erosion of trust through release of this information would directly impinge on the activities being undertaken by the Defence Force, would damage the relationships Defence holds with other countries which are central to Australia's ability to defend itself, and would result in Australia being denied access to sensitive information critical to Australia's national interests.

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 exemption.

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. Accordingly I consider the release of the information so marked, would or could reasonably be expected to, cause damage to the security and international relations of the Commonwealth. I therefore consider this information exempt under sections 33(a)(i) and 33(a)(iii) of the FOI Act.

Section 47G – Public interest conditional exemptions - business

14. Under section 47G of the FOI Act, a document 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 that 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.

15. As above, 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.

16. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that the effect of disclosing the identified material could have an adverse effect on a company as disclosure of their capabilities and methods could diminish the competitive nature of the business and could affect the profitability of their business operations.

17. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G of the FOI Act.

Public interest considerations – 47G

18. 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.*

19. 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.

20. Disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. 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 some material contained in the documents in order to protect the operations of businesses.

21. There is a strong public interest in not releasing information that would unreasonably affect a business. I took into account the nature of the material and found that its disclosure in this instance would not significantly promote the objects of the Act, or inform debate on a matter of public importance. However, disclosure has the potential to cause harm to the business and risk Defence’s commercial relationship with service providers.

22. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, I have decided that it would be contrary to the public interest to release the information considered exempt under section 47G of the FOI Act.

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

Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

24. Section 24A(1) of the FOI Act states:

(1) An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document; and

(b) the agency or Minister is satisfied that the document:

(i) is in the agency's or Minister's possession but cannot be found;

or

(ii) does not exist.

Searches conducted for Item 1, 3, Appendix B, Appendix H and Appendix L of Item 9, and Appendix A, Appendix B & Appendix C of Item 14

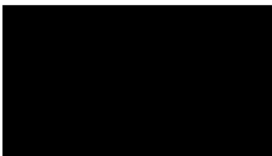
25. Searches undertaken by officers within the PFAS Taskforce of both physical files and Defence's electronic records management system (Objective) using various search terms for Items 1 & 3 such as Environment and Heritage Strategy – Implementation Plan, Environment & Heritage Strategy, Implementation Plan for RAAF Base Tindal, Fire State Contamination Investigation RAAF Base Tindal, Fire State and Contamination Investigation RAAF Base Tindal were not able to identify these documents. Similar search parameters were conducted for the missing appendices utilising different variations of the names of each of the appendices. These documents could not be located.

26. Based on the above, I am satisfied that no documents could be found matching the scope for items 1 & 3 or the missing appendices for items 9 & 14. Accordingly I have decided to refuse access to these items under section 24A of the FOI Act.

Further Information

27. 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.

28. Access to Item 17 is publicly available on the internet at <http://www.defence.gov.au/Environment/PFAS/Docs/General/PSPReports/PSPTindal.pdf>.



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7.9.18