



**Australian Government**

**Department of Defence**

## **DEFENCE FOI 557/20/21 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:

*“Item 1 - Copy of all correspondence (internal and to/from minister’s office) from February 2021 to date at which FOI is processed, related to ABC and/or ABC 7.30 and/or TV media request for access to F35 program and filming at Williamtown air force base.*

*Item 2 - A document detailing the cost per flight hour for the F35s and projected lifetime costs of the project.*

*Item 3 - Compiled list of any mechanical and/or engine issues and/or spare parts issues identified with the F35 fleet from January 2020 to 31 May 2021 which the FOI is processed. Please list each issue separately plus brief overview of issue and date of occurrence.”*

### **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 50 documents as matching the description of the request, including one that was generated in accordance with section 17 of the FOI Act - Requests involving use of computers etc - to satisfy the request. This was done on the basis that the agency could produce a written document, containing the information in discrete form, by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information - section 17(1)(c)(i).
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.

### **Exclusions**

6. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request and duplicates of documents are excluded from this request. Defence has only considered final versions of documents.

### **Decision**

7. I have decided to:
  - a. Release six documents in full;
  - b. Partially release 44 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 47E(d) [certain operations of agencies] and/or section 47F [personal privacy] of the FOI Act; and

- c. remove irrelevant material 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); and
  - e. material from Defence Media, Air Force and Capability Acquisition and Sustainment Group.

### **Reasons for decision Section 22 - Edited copies with exempt of irrelevant matter deleted**

- 9. Section 22 of the FOI Act provides that if an agency or Minister may decide:
  - (i) to refuse to give access to an exempt document; or
  - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.
- 10. As such, documents containing mobile, signatures and information of persons other than the applicant are considered to be outside the scope of the request or irrelevant to the request.
- 11. Considering the above, I decided that it was reasonably practicable to remove the material of concern and release the documents in the amended form.

### **Section 47E - Certain operations of agencies**

- 12. Section 47E(d) of the FOI Act relevantly states:
 

*A document is conditionally exempt if its disclosure would, or could reasonably be expected to:*

  - (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*
- 13. In relation to subsection 47E(d) of the FOI Act, paragraph 6.123 of the Guidelines advise that, where the document relates to certain operations of agencies, the decision maker must address whether “*the predicted effect must bear on the agency’s ‘proper and efficient’ operations, that is, the agency is undertaking its expected activities in an expected manner.*”
- 14. The information, if released, would, or could affect the integrity and efficacy of the Royal Australian Air Force’s internal procedures pertaining to its decision-making and also the preparations and conduct of some of its operations. If such information was made publicly available it could reasonably have an adverse effect on the Australian Defence Force’s ability to conduct, manage and perform these functions into the future.
- 15. Noting all of the above, I have decided that some material is conditionally exempt under subsection 47E(d) of the FOI Act. My public interest considerations are set out below.

### **Section 47F - Personal privacy**

16. Upon examination of the documents, I identified that certain material contains personal information of individuals other than the applicant.

17. Following the Guidelines (6.410), 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 within the documents; and
- c. the availability of the information from publicly accessible sources.

18. Against the criteria, I found:

- a. the specific personal information listed is not well known;
- b. the documents contain third party personal information;
- c. the information is not readily available from publicly accessible sources; and
- d. no public purpose would be achieved through release.

19. 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 is conditionally exempt under section 47F of the FOI Act.

20. Noting all of the above, I have decided that some materials are conditionally exempt under section 47F of the FOI Act. My public interest considerations are set out below.

### **Sections 47E(d) and 47F – Public interest considerations**

21. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of relevant factors that favour access to a document set out in section 11B(3) [public interest exemptions - factors favouring access] of the FOI Act. Disclosure may promote some of the objects of the FOI Act, information held by the Government as it is a national resource and release of the personal information would promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act. However, I do not consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities.

22. Section 11A(5) also provides that, if a document is conditionally exempt, it must be disclosed unless (in the circumstances) access to the documents at the time would, on balance, be contrary to the public interest.

23. Upon examination of the documents, I found some containing information concerning the proper and efficient conduct of the operations of Defence, specifically policies and practices for handling sensitive information and decision-making in an efficient manner. Also contained within the documents were references to aircraft conducting operations, and deployments of personnel and aircraft.

24. As such information may lead to a substantial adverse effect on the proper and efficient conduct of the Air Force, I find that, on balance, the public interest factors against disclosure outweigh the factors for full disclosure of this Report.

25. 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 disclosure of the documents could reasonably be expected to prejudice:

- a. the protection of an individual's right to privacy;
- b. the interests of an individual or group of individuals; and
- c. the management function of an agency.

26. Additionally, paragraph 6.128 of the Guidelines specifies that personal information means information or opinion about an identified individual or an individual that can be readily identified. The information may be recorded in material form. Furthermore, personal information is inclusive of what it says about a person, may be opinion, and may be true or untrue.

27. Further, paragraph 6.138, the Guidelines specify that the personal privacy exemption is designed to prevent the unreasonable invasion of a third parties' privacy. Disclosure is deemed unreasonable if the author of the document is identifiable, the documents contain third party personal information, and/or no public purpose would be achieved through release.

28. I have found that many of the documents contained references to personal information in terms of their names and professional standing. Some documents also contained personal opinion, advice and/or recommendation that was part of consultative processes and deliberation.

29. In assessing whether disclosure of the conditionally exempt material is in the public interest, I then further considered the objects of the FOI Act and the Guidelines.

30. While I consider that release of the material removed under section 47F may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. There is also a public interest in maintaining the confidentiality of material contained in the documents, and there is an expectation that the Australian Defence Force (ADF) manages information and personnel in a sensitive way.

31. It is for those reasons that I find that, on balance, the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under subsection 47E(d) and section 47F of the FOI Act.

32. In coming to the above decision I considered factors outlined in section 11B(4) [irrelevant factors] of the FOI Act. None of these factors were taken into account in making my decision.

### **Further information**

33. Under section 17 of the FOI Act, I have dealt with items two and three of the request as if it were a request for access to a written document and produced a document consisting of the requested information. This response is located within the consolidated document pack from page 108 onwards.

34. The delay in processing this application was due to the late discovery of two additional sets of documents which were assessed then added to schedule of documents. This delay is regretted.

**M.A. Kelton OAM**

Group Captain

Accredited Decision Maker

Air Force