



Reference: BN9651386

FOI 029/19/20 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:

'I request copies of weekly and/or monthly and/or quarterly and/or annual reports by the Australian Defence Export Advocate, Mr David Johnston and/or his office.'

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.

Background

3. The Australian Defence Export Advocate supports the work of the Australian Defence Export Office, which was established as part of the Defence Export Strategy. The Advocate is a senior-level external appointment into the Department of Defence with dual responsibilities for undertaking enduring advocacy on behalf of Australian defence industry and developing and delivering strategic export campaigns. This role complements the high profile promotional work undertaken by Team Defence Australia senior ADF Reservists. The Advocate is also a member of the Centre for Defence Industry Capability Advisory Board, recognising the synergies between Australian industry development and export success. The role involves chairing the Defence Export Forum, which includes representation from Commonwealth agencies, State and Territory governments, industry peak bodies, as well as the State and Territory Defence Advocates. This Forum provides input to the development of export campaigns, coordinate export advocacy efforts across all levels of government and minimise duplication of resources.

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 number to each of the documents, which corresponds with the schedule.

Decision

7. I have decided to:
 - a. partially release three 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 [personal privacy] and section 47G [business affairs] of the FOI Act; and
 - b. partially release nine 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)(iii) [documents affecting international relations], section 47 [commercially valuable information], section 47F [personal privacy] and section 47G [business affairs] of the FOI Act; and

- c. refuse access to one document under section 33(a)(iii) [documents affecting international relations] and section 47G [business affairs] of the FOI Act,
- d. refuse access to two documents under section 33(a)(iii) [documents affecting international relations], section 47 [commercially valuable information], section 47F [personal privacy] and section 47G [business affairs] 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. advice from the Department of Foreign Affairs and Trade; and
 - f. advice from Defence Industry Policy Branch at the Department of Defence.

Reasons for decision

Section 33 – documents affecting international relations

9. Upon examination of the documents, I identified information that, if released would or could reasonably be expected to cause damage to the international relations of the Commonwealth. Paragraph 5.36 of the Guidelines describes ‘international relations’ as the ability of the Australian Government to maintain good working relations with other governments and international organisations.

10. Paragraph 5.37 of the Guidelines says that “the expectation of damage to international relations must be reasonable in all circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship.”

11. The documents contain records of Mr Johnston’s meetings with officials from foreign governments, and assessments of the activities of foreign governments. The release of this information would cause a loss of trust and confidence such that foreign officials would likely be less willing to engage with the Australian Government. This would cause damage to important relationships for the Australian Government and adversely affect Mr Johnston’s ability to fulfil his functions with respect to those countries.

12. Accordingly, I consider the release of the information would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth and be exempt from release under section 33(a)(iii) of the FOI Act.

Section 47 – documents disclosing trade secrets or commercially valuable information

13. I also identified information of commercial value to the companies with which Mr Johnston engaged in his role as Australian Defence Export Advocate. Paragraph 5.204 of the Guidelines states that to be exempt under section 47(1)(b) a document must satisfy two criteria – it must contain information that has a commercial value either to the agency or to another person or body; and the commercial value of the information would be, or could be reasonably be expected to be, destroyed or diminished if it were disclosed.

14. The documents contain commercial information relating to the ability of certain companies to conduct exports, and the release of such information could reasonably be expected to diminish the commercial advantage of those companies and the commercial advantage of the Australian defence export industry sector.

15. Accordingly, I consider the release of the information would, or could reasonably be expected to, diminish commercial value, and be exempt from release under section 47(1)(b) of the FOI Act.

Section 47F - Personal privacy

16. In examining the documents, I identified personal information, such as residential address and bank details of Mr Johnston, and names of individuals with whom Mr Johnston had met in the course of his duties.

17. 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; and
- b. The effect the release of personal information could reasonably have on the third party.

18. I found that Mr Johnston's personal information was not well known, and that its disclosure could have a damaging effect on his personal affairs, including but not limited to the increased risk of damage to personal property and to financial fraud.

19. I found that the names of individuals with whom Mr Johnston met in the course of his duties were, in many cases, able to be linked to companies in the Australian defence industry sector through open source research. However, the fact of their meeting with Mr Johnston on the particular time and dates referenced in the documents was not well known and could not have been readily obtained. These publication of these specific details could constitute an unwarranted intrusion into the private affairs of these named individuals.

20. Taking into account the above factors, I consider that the release of personal information would be an unreasonable disclosure and conditionally exempt under section 47F(1) of the FOI Act.

Section 47G – business affairs

21. In examining the documents, I identified business information relating to Mr Johnston (namely, his remuneration) and of a number of third parties. 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; or*
- b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.”*

22. I note that this provision requires consideration of the reasonable expectation, rather than certainty, to be applied in deciding whether disclosure would cause the consequences specified.

23. 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 about Mr Johnston's business affairs would unreasonably and adversely affect his business affairs. I am also satisfied that disclosing information related to the export activities of third parties could reasonably be expected to prejudice the future supply of information to the Commonwealth.

24. As such, I am satisfied that this information contained in these documents is conditionally exempt under section 47G of the FOI Act.

Sections 47F and 47G - Public interest considerations

25. 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 the public interest.'

26. 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 as set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

Section 47F

27. There is a clear public interest in ensuring that Mr Johnston is effectively carrying out his duties, and the public would naturally expect that Mr Johnston was meeting with a large number of people and seeking out diverse views. However, I do not consider that the public's interest extends to knowing the names and affiliations of the people with whom Mr Johnston is meeting, and their right to privacy outweighs the public's right to be informed of the details of the people with whom Mr Johnston is meeting.

28. I also consider that it is not at all in the public interest for personal identifiable information belonging to Mr Johnston to be made public.

29. I therefore find that it would be contrary to the public interest to release information considered conditionally exempt under section 47F of the FOI Act.

Section 47G

30. I consider that disclosure of the information conditionally exempt under section 47G of the FOI Act may increase proper scrutiny of Defence's success in advocating for Australia's defence industry exports, and inform public debate on a matter of economic and strategic importance to Australia.

31. Although I consider there is a clear public interest in knowing the Australian Defence Export Advocate is performing his duties, this public interest does not extend to knowledge of the specific meetings held by Mr Johnston and representatives of commercial organisations. Disclosing information about individual meetings taking place could make some commercial organisations reticent to meet with Mr Johnston in the future. This could have an adverse effect on Mr Johnston's ability to acquire useful information in order to perform his function effectively, and would in turn prejudice Defence's ability to effectively boost Australia's exports in the defence industry sector.

32. As such, 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.

33. I have not taken into account any of the factors deemed irrelevant in section 11B(4) of the FOI Act.

Section 22 (where documents are being denied in full)

34. Section 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. I have considered disclosing the documents to you with deletions, but have decided against this course of action, as the document would be meaningless and of little or no value once the exempt material is removed.

Third party consultation

35. I decided to consult with Mr David Johnston regarding his information which was contained in the documents. Mr Johnston has not objected to the release of the documents.

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Mrs Joanne Groves
Accredited Decision Maker
Associate Secretary Group