



Reference: BO4259016

FOI 100/19/20 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:

“a copy of the AC-130J Test & Evaluation Master Plan (TEMP) to assist with an assignment at UNSW.”

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 one document, totalling 86 pages, as matching the description of the request.

Decision

4. I have decided to partially release one document 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 [documents affecting national security or international relations] and 47E [public interest conditional exemption-certain operations of an agency] of the FOI Act.

Material taken into account

5. 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 Headquarters Air Mobility Group (HQAMG) and Headquarters Test and Evaluation Directorate (HQTED).

Reasons for decision

Section 33 – Documents affecting national security or international relations

6. Subparagraph 33(a)(iii) of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

7. In regards to the terms ‘could reasonably be expected to’ and ‘damage’, the Guidelines provide:

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

5.28 ‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage is likely to result from disclosure of the document(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments. A dispute between individuals may have sufficient ramifications to affect relations between governments. It is not a necessary consequence in all cases but a matter of degree to be determined on the facts of each particular case.

8. Upon examination of the document, I identified material which upon release ‘could reasonably be expected to, cause damage to the international relations of the Commonwealth’ by making public information which may diminish the confidence other countries may have that Australian agencies are able to keep certain information confidential.

9. In light of the above, I have decided that the specified material identified is exempt pursuant to section 33 of the FOI Act.

Section 47E – Certain operations of an agency

10. Section 47E(d) of the Act states:

A document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to, do any of the following:

...(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency...

11. Where access has been denied to information under section 47E(d) of the FOI Act, I considered that the material could reasonably be expected to have substantial adverse effect on the proper and efficient conduct of operations of Defence.

12. As noted above, use of the word ‘could’ in this provision requires no more than a degree of reasonableness being applied in deciding whether disclosure would cause the consequences specified. The reasonable expectation refers to material regarding details of Aircraft.

13. I am satisfied that the expected effect of disclosing to the applicant material identified under section 47E(d) could have a substantial adverse effect on the proper and efficient conduct of the operations of Defence; in that once information was made publically available it could divulge areas of capability interest.

14. Taking the above into consideration, I have decided that the specified material identified is conditionally exempt under subsection 47E of the FOI Act.

Public interest considerations - section 47E

15. Section 11A(5) of the FOI Act requires an agency to allow access to a conditionally exempt document unless, in the circumstances, access to the document at the time would, on balance, be contrary to the public interest.

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

- a. promote the objects of the FOI Act (including all the matters set out in section 3 and 3A);
- b. inform debate of a matter of public importance;
- c. promote effective oversight of public expenditure; and
- d. allow a person to access his or her own personal information.

17. I note that disclosure of the requested document may promote some of the objects of the FOI Act, as information held by the government is a national resource. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of defence activities.

18. While I consider that release of the material removed under sections 47E 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. Furthermore, the exclusion of the exempt material does not detract from the information sought by the applicant in relation to their request.

19. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document and deem the information exempt under sections 47E(d) of the FOI Act.

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

Digitally signed
by
richard
.alberts
Date:
2019.09.17
17:13:17 +10'00'

R. Alberts
Group Captain
Accredited Decision Maker
Air Force

September 2019