



Reference: R26293091

FOI 184/19/20 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by _____ under the *Freedom of Information Act 1982* (FOI Act), for access to:

“...documents produced between 1 January 2018 and 30 September 2019 regarding Australian citizens involved in the ongoing conflict in Yemen. Specifically, I seek access to:

- 1. Ministerial submissions regarding Australian citizens involved in the war in Yemen;*
- 2. final reports and/or briefings provided to senior defence officials (First Assistant Secretaries and above) regarding Australian citizens involved in the war in Yemen;*
- 3. documents, including emails and other correspondence, regarding Australian citizens advising and/or assisting the military of the United Arab Emirates in that nation’s contribution to the Saudi Arabian-led military intervention in Yemen; and*
- 4. documents regarding the death or wounding of Australian citizens serving as combatants and/or private military contractors (whether unlawful or not) in Yemen”*

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 nine (9) documents as matching the description of the request.
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.

Decision

6. I have decided to:
 - a. release one (1) document in full;
 - b. deny access to five (5) documents on the grounds the deleted material is considered exempt under section 7 [Exemption of certain persons and bodies], and subsections 33(a)(i) and 33(a)(iii) [documents affecting national security, defence or international relations] of the FOI Act; and
 - c. partially release three (3) 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 22(1)(b)(ii) [not relevant to the request] and section 47F [Personal Privacy] of the FOI Act.

Material taken into account

7. 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 from International Policy Division and Military Strategic Commitments Division.

Reasons for decision

Section 7 – Exemption of certain persons or bodies

8. Section 7(2A) of the FOI Act identifies that an agency is exempt from the operation of the FOI Act in relation to the documents listed at subsection 7(2A)(a)(i – vii). Further the exemptions identified at subsection 7(2C) also apply to two of the documents identified in the search.

9. As such, access to these documents is denied.

Subsections 33(a)(i) and 33(a)(iii) – Documents affecting national security or international relations

10. Paragraphs 33(a)(i) and (iii) of the FOI Act exempt documents that affect Australia’s national security and international relations. These paragraphs state:

‘A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

(i) the security of the Commonwealth...

(iii) the international relations of the Commonwealth

11. The term ‘*security of the Commonwealth*’, as defined in section 4 of the FOI Act, broadly refers to the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests. The term ‘*international relations*’ has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations.

12. I have identified information within the documents that, if released, could jeopardise Australia’s security and our relationship with the United Arab Emirates.

13. The release of some information found in these documents would damage Australia’s ability to maintain a good working relationship with other governments and international organisations. The disclosure of the information may also diminish the confidence another country would have in Australia as a reliable recipient of its confidential information, making that country or agency less willing to cooperate with Australian agencies in the future.

14. In evaluating the potential harmful effects of disclosing sensitive information in the documents referred to in paragraph 3, I have also taken into account ‘mosaic theory’, which refers to individual pieces of information which may not be harmful in isolation, but which may cause damage to Australia’s national security when combined with other pieces of information.

15. I have therefore decided to exempt this information under subsections 33(a)(i) and 33(a)(iii) of the FOI Act.

Subsection 33(b) – Documents communicated in confidence

16. Subsection 33(b) of the FOI Act exempts information communicated in confidence to the Australian Government or agency by another government or one of its authorities.

17. I have identified documents and information communicated in confidence between Governments. This information was communicated in a confidential forum and provided under the understanding that it would not be provided to a third party.

18. I have therefore decided to exempt this information under subsection 33(b) of the FOI Act.

Section 22 (where documents are being denied in full)

19. 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. 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.

Section 47F - Public interest conditional exemptions - Personal Privacy

20. In accordance with section 47F of the FOI Act and paragraphs 6.127-6.137 of the Guidelines, “[a] document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person”. On examination of the documents, I have found that the document contains personal information (names, private email addresses and telephone numbers) of a number of persons other than the applicant. They are not relevant to the application.

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

22. 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.

23. I found that the:

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

Public Interest Conditional Exemption Considerations

24. Section 11A(5) of the FOI Act states that access must be given to a document even “...*if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest...*”.

25. 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.

26. I consider that disclosure may promote some of the objects of the FOI Act, as information held by Government is a national resource. The disclosure of the documents I have decided to

exempt would not, in my view, increase public participation in Government processes nor would it increase scrutiny or discussion of Government activities.

27. While I considered that disclosure may increase scrutiny or discussion of Defence activities, I found disclosure of some information in the document would reveal sensitive considerations associated with Defence activities. Disclosure of some information in the document would also reveal sensitive matters affecting the Defence organisation, particularly those related to relationships with foreign governments.

28. While I accept that 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. Disclosure of the sensitive or confidential material would potentially impact and harm the Commonwealth's ability to effectively manage its business and foreign relations. While I found that disclosure may increase scrutiny or discussion of Defence activities, I found the public interest in protecting the information would far outweigh the public interest in the release of the identified material.

29. Further, paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I found particularly relevant in considering disclosure of the identified material are that, if released, this information could reasonably be expected to:

- a. prejudice the protection of an individual's right to privacy;
- b. prejudice an agency's ability to obtain confidential information; and
- c. prejudice an agency's ability to obtain similar information in the future.

30. In weighing the public interest, I also considered any detriment that disclosure may cause to the person to whom the information relates and the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

31. None of the factors listed in section 11B(4) of the FOI Act [Irrelevant Factors] were taken into account when making my decisions under the Public Interest or Personal Privacy conditional exemptions.

Further Information

32. In accordance with the requirements of section 11C of the FOI Act, details of information released under the FOI Act are required to be published. The Department of Defence will publish identified documents relating to requests within five working days of receipt by the applicant or immediately following any publication of the released material. Defence will also publish the statement of reasons with privacy deletions.

33. Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. Your review rights are attached.



Rachelle Warner

Accredited Decision Maker
Strategic Policy & Intelligence Group

9 December 2019