



**Australian Government**  
**Department of Defence**

Reference: BN11376913

**FOI 224/19/20 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 any list or document detailing the exchanges and meetings between the Australian Defence Force and the Sri Lankan Army, Sri Lankan Air Force and the Sri Lankan Navy including the names of foreign dignitaries or officials present from, 1 January 2011 until 1 October 2012....”*

**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 32 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 seven (7) documents on the grounds the deleted material is considered exempt under section 33 [documents affecting national security, defence or international relations] of the FOI Act; and
  - c. partially release twenty four (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 section 47F [Personal Privacy] and sub section 22(1)(b)(ii) [not relevant to the request] 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, Joint Capabilities Group, Army and Navy.

## **Reasons for decision**

### **Section 22 (where documents are being denied in full)**

8. 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.

### **Subsection 33(a) – Documents affecting national security, defence or international relations**

#### **Subsection 33(b) – Documents communicated in confidence to the Commonwealth**

9. Subsection 33(a) of the FOI Act exempts documents that would, or could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth.

10. 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.

11. It is a matter of Australian practice that bilateral arrangements are not released to other third parties without the consent of both Participants.

12. As a matter of customary practice, the information communicated and subsequently contained in all Defence arrangements are negotiated in confidence. The documents are accordingly also subsequently treated and handled as being confidential between the Participants, which the Participant nations to an arrangement have a legitimate expectation will be maintained. This is particularly the case concerning defence and security related arrangements, where the public release of such documents may impact upon, and potentially undermine, the trusted relationship between the Participant nations and/or wider international negotiations and dealings with other nations if they become, or are made, aware of those confidential arrangements between the two nations.

13. The release of these documents would damage Australia's ability to maintain a good working relationship with Sri Lanka, other governments, and international organisations. The disclosure of the information would also likely diminish the confidence which 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. I have therefore determined that this material is exempt under section 33 of the FOI Act.

### **Section 47F - Personal Privacy**

15. 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 documents contain personal information (names, private email addresses, physical addresses and telephone numbers) of a number of persons other than the applicant. They are not relevant to the application.

16. 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.

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;
- 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.

18. 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**

19. 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...”.

20. 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.

21. 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 information 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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**

9. 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.

10. 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.

11. 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

**27** November 2019