



Reference: BP7486891

**FOI 363/19/20 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:

*“latest copies of two RAAF 41 Wing “Standing Instructions” which were in use in 2013/14. They are/were “41 WG SI(OPS) 03-19, Contacts of Interest Reporting Process” and “41 WG SI(OPS) 3-15, Unauthorised Aircraft Movements Reporting and Investigation Process”.*

*The date range is simply as recent as possible, ie the latest versions of these records.*

*I seek significant draft material, but nothing so similar to the final published documents that they are indistinguishable from them.”*

**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 five documents totalling 25 pages, 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. partially release four 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 [public interest conditional exemptions-certain operations of agencies] of the FOI Act; and
- b. 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 section 33 [absolute exemption – documents affecting national security, defence or international relations] 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 Headquarters Surveillance Response Group, 1 Remote Sensor Unit and 41 WING.

### **Reasons for decision**

#### **Section 33 – Documents affecting national security or international relations**

8. Section 33(a)(ii) of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the defence of the Commonwealth.

9. 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, or could occur in the future.*

*5.28 ‘Damage’ to the defence of the Commonwealth is not necessarily confined to 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.*

*5.34 The FOI Act does not define ‘defence of the Commonwealth’. Previous Administrative Appeals Tribunal (AAT) decisions indicate that the term includes protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

10. The documents contain detailed classified materials pertaining to operational practices. Specifically, the information identified details the operational processes, tactics, techniques and procedures in relation to contacts of interest. Having regard to the Guidelines relating to what ‘could reasonably be expected to’ to ‘damage’ the defence of the Commonwealth, I consider that this information falls within this category. If released, this information could allow nations hostile to the Commonwealth’s interests to use counter measures to hinder Defence activities and operations, which would prejudice its effectiveness.

11. Particular consideration has been made regarding the mosaic effect of releasing the information that may on its own appear to be insignificant. However, when combined with other publicly available information, and material in the document that is being released, the information would divulge specific Defence capabilities.

12. Taking the above into account, I find that release of the information could reasonably provide an adversary with a tactical advantage and diminish the capability of the Australian Defence Force to defend the Commonwealth. Accordingly, I consider the release of this information is exempt under section 33(a)(ii) of the FOI Act.

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

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

*A document is conditionally exempt if its disclosure under the Act 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*

14. In relation to section 47E(d) of the FOI Act, the Guidelines advise that, where the documents relates to the proper and efficient conduct of the management of operations, the decision maker must address whether:

- a. an effect would be reasonably expected following disclosure
- b. the expected effect would be both substantial and adverse.

15. Upon examination of the documents, I found that they contained information for which a claim for exemption under section 47E(d) of the FOI Act is warranted. The information which is conditionally exempt under section 47E(d) reveals information that could be used by individuals to circumvent our detection procedures, and enter or leave Australian Sovereign Territory airspace without clearance or detection.

16. The release of this information within these documents may prejudice the Department of Defence's (Defence) ability to maintain confidentiality, and prevent the compromise of operations relative to Air Force surveillance capability.

17. Taking the above into consideration, I am of the view that release of the information would have a substantial adverse effect on the management of personnel, and is therefore conditionally exempt under section 47E(d) of the FOI Act.

### **Section 47E - Public Interest Considerations**

18. Section 11A(5) 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'.

19. I find disclosure of the conditionally exempt section 47E, information would reveal sensitive considerations associated with Defence activities, in relation to the proper and efficient conduct of Defence. While I accept there is a public interest in ensuring Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the robust advice, options and recommendations provided as part of these processes. While it is considered that disclosure might increase scrutiny of Defence activities, I feel the public interest is better served in protecting the opinions and advice considered in the deliberative process.

20. I further considered whether disclosure would promote the objects of the FOI Act, as information held by the Government is a natural resource. However disclosure of information in these documents, would not increase participation in debate on a matter of public importance, nor would it increase scrutiny or discussion of Defence activities.

21. 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 release of this information could reasonably be expected to prejudice:

- a. an agency's ability to obtain similar information in the future
- b. the efficient and effective management of an agency.

22. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47E of the FOI Act.

23. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

#### **Further Information**

24. 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.

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**A. Stainton**  
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