



Reference: BN5636580

FOI 368/18/19 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 write seeking information under the Freedom of Information Act, specifically the report, or latest draft, arising from the Naval Workforce Review, as listed with contracts including CN3493595.”

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 as matching the description of the request.
4. I have added an FOI reference number to the document.

Decision

5. I have decided to partially release the document in accordance with section 22 [access to edited copies with exempt or irrelevant material deleted] on the grounds that the deleted material is exempt under section 33(a)(ii) [defence of the Commonwealth], section 47(1)(b) [commercially valuable information] and/or section 47C [public interest conditional exemptions—deliberative processes] of the FOI Act.

Material taken into account

6. 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 received from the Royal Australian Navy; and
 - f. consultation with affected third parties.

Reasons for decision

Section 33(a)(ii) – defence of the Commonwealth

7. 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.
8. In regards to the terms, ‘could reasonably be expected to’, the Guidelines specify:

Paragraph 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

9. While the FOI Act does not define ‘defence of the Commonwealth’, previous Administrative Appeals Tribunal decisions indicate the term includes protecting the Defence Force from hindrance or activities which could prejudice its effectiveness.

10. The document you have requested contains some specific information on the planning and management of the naval workforce – a fundamental input for a sensitive Defence capability. Disclosure of this information could give insight into the Commonwealth’s ability to manage and apply that capability and such disclosure could be reasonably be expected to cause damage to the defence of the Commonwealth by providing adversaries with a military advantage.

11. In evaluating the potential harmful effects of disclosing information in the documents 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 the defence of the Commonwealth when combined with other publicly available information and material in the document that is being released.

12. I have therefore determined that the material is exempt under section 33(a)(ii) of the FOI Act.

Section 47(1)(b) – commercially valuable information

13. Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure under the FOI Act would disclose any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

14. I found information in the document having commercial value to the authors of the report. Releasing the information could reasonably be expected to adversely affect the authors’ competitive advantage in the consultancy market by disclosing the review methodology to potential competitors.

15. I have therefore determined that the information is exempt under section 47(1)(b) of the FOI Act.

Section 47C – deliberative processes

16. In assessing the document I have identified deliberative matters – that is, content that is in the nature of, or relating to either opinion, advice or recommendation that has been obtained, prepared or recorded; or a consultation or deliberation that has taken place, in the course of, or for the purpose of, a deliberative process of the department. Paragraphs 6.58-6.62 of the Guidelines describe what constitutes a deliberative process.

17. The document is an interim report that contains opinions, advice, recommendations and supporting material that was gathered through consultation. Defence has not yet fully considered the report, and has made no decisions on its recommendations. Consequently, I find the document contains deliberative matters that are conditionally exempt under section 47C(1) of the FOI Act.

18. 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 that time would, on balance, be contrary to the public interest.

19. My public interest considerations are detailed below.

Section 47C – public interest considerations

20. 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 that time would, on balance, be contrary to the public interest.

21. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act, which favours access to a document:

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

22. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, the 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.

23. Paragraph 6.22 of the Guidelines provides a non-exhaustive list of public interest factors against disclosure. The factor I find particularly relevant to this request is that release of this information could reasonably be expected to prejudice or harm a Defence management function, specifically its ability to manage its workforce;

24. While I accept 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 while they are still in the deliberative stages. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

25. I consider that there is a strong public interest in preventing an adverse effect on the ability of Defence to both receive and prepare frank advice, the premature release of which could impede the effective completion of the matters under deliberation.

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

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

Further Information

28. The document matching the scope of this request contained a dissemination limiting marker. As the document is approved for public release the marker has been struck through.

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Tony Brown
Accredited Decision Maker
Capability and Sustainment Group