



2019/BN7289525

FOI 433/18/19 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:

'The communications pack document prepared for the docking of Chinese warships at Sydney Harbour on June 3, 2019.'

Excluding private email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, I exclude duplicates of documents, and documents sent to and from me and I only seek final versions of documents.

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 the FOI reference number to the document.

Decision

5. I have decided to:
 - a. 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(a)(iii) [Documents affecting the international relations of the Commonwealth] and/or section 33(b) [Any information or matter communicated in confidence] and/or section 47E(d) [Public interest conditional exemptions-certain operations of agencies] of the FOI Act; and
 - b. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) 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 document 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 provided by Strategic Policy & Intelligence Group, Headquarters Joint Operations Command and Navy Headquarters.

Reasons for decision

Section 33 Documents affecting national security, defence or international relations

7. Section 33 of the FOI Act exempts documents that affect Australia's national security, defence and international relations. More specifically, paragraph 33(a)(iii) states:

'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:

...

(iii) the international relations of the Commonwealth'

8. While the FOI Act does not define 'international relations of the Commonwealth', information contained in the document relates to contingency talking points developed to address possible scenarios which, in the event, did not occur. If disclosed retrospectively, the information would reasonably be regarded by international partners of the Commonwealth as a breach of trust and could adversely affect future co-operation with those nations.

9. Further, paragraph 33(b) exempts documents if disclosure:

'would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.'

10. The document contains information communicated in confidence on behalf of a foreign government. The information was provided as background information only and was not intended for public release. Release of the information would inevitably be seen as a major breach of trust and could prevent the sharing of such information in the future.

11. Taking into account the above, I find that disclosure of this information would divulge details communicated in confidence and could reasonably be expected to damage the international relations of the Commonwealth, and is therefore exempt under section 33 of the FOI Act.

Section 47E Public interest conditional exemptions-certain operations of agencies

12. Upon examination of the document, I identified information regarding the identity of individuals and responses to situations that could feasibly arise.

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

'A document is conditionally exempt if its disclosure under this 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.'

14. Paragraph 6.103 of the Guidelines explains that for section 47E to apply:

'An agency cannot merely assert that an effect could occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur.'

15. In this instance, identifying information of individuals would reveal the internal processes of an agency and make known the circumstance under which the proper and efficient procedures for responding to contemporary events could be circumvented. This would cause real harm to the ability of Defence to provide a considered response to enquiries in line with its regulatory and statutory responsibilities.

16. I find that part of the document within scope of this request is conditionally exempt pursuant to section 47E of the FOI Act.

Public interest considerations

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

18. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factor being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, this must be balanced against the factors against disclosure.

19. The Guidelines specify 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 the management function of Defence. I also consider that disclosure of the information would not increase public scrutiny of the Government's processes or activities.

20. Taking into account the above, I find that disclosure of this information could reasonably be expected to have a substantial adverse effect on the proper and efficient operations of Defence and is exempt under section 47E of the FOI Act.

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

Further information

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

nick.youseman Digitally signed by
nick.youseman
Date: 2019.07.10 11:30:19 +10'00'

NJ Youseman
CAPT, RAN
Accredited Decision Maker
SP&I Group