



Reference: FBO550242

FOI 463/18/19 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:

“Documents relating to hospitality declarations, gift declarations and sponsorship declarations by Defence executives and military officers from FY 2017-18 and FY 2018-19 to date.

- *Exclude personal email addresses, signature, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request.*
- *Please also exclude duplicates of the 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 database and other electronic records as matching the description of the request.
4. Under section 17 of the FOI Act I have dealt with the request as if it were a request for access to a written document so produced and containing the requested information.
5. In accordance with section 17(1) of the FOI Act I have created a written document from a database that stores hospitality declarations, gift declarations and sponsorship declarations. The created document also ensures no duplicates, as requested by the applicant.
6. I have added an FOI reference number to the document.

Decision

7. For the purpose of making a decision on this FOI request, I have taken *Defence executives and military officers* to mean Senior Executive Service Australian Public Service employees at the Band 1 level and above and all Australian Defence Force star-ranked officers. While all hospitality declarations have been included in the document, only the names of Senior Executive Service Australian Public Service employees and Australian Defence Force star-ranked officers remain.
8. I have decided to partially release the document created under section 17(1) of the FOI Act 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 7(2A) [exemption of certain persons and bodies], section 33(a)(i) [documents

affecting security of the Commonwealth], section 33(a)(iii) [documents affecting international relations] and/or section 47G [public interest conditional exemptions – business] of the FOI Act.

Material taken into account

9. 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. the Defence Instruction (General) *Gifts, Hospitality and Sponsorship*.

Reasons for decision

Section 7 (2A) – Exempt Agency

10. Upon examination of the document, I identified information which was received from an intelligence agency.

11. Section 7(2A) of the FOI Act (supplemented by Schedule 2, Part II) lists agencies that are exempt from the operation of the Act in relation to documents that originated with or received from those agencies. The exemption extends to a part of a document that contains an extract from or a summary of an intelligence agency document, or a defence intelligence document.

12. I am satisfied that the material exempted under Section 7 (2A) of the FOI Act has been received from listed agencies.

Section 33(a)(i) – Security of the Commonwealth

13. Section 33 of the FOI Act exempts a document if its disclosure under the Act would or could reasonably be expected to, cause damage to the security, defence or international relations of the Commonwealth, or information that would divulge information or matter communicated in confidence by or on behalf of a foreign government.

14. The guidelines state:

Security of the Commonwealth

5.29 The term ‘security of the Commonwealth’ broadly refers to:

(a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth...

5.30 A decision maker must be satisfied that disclosure of the information under consideration would, or could reasonably be expected to, cause damage to the security of the Commonwealth...

5.32 The claim has been upheld in the following situations:

(b) The disclosure of a defence instruction of the Army’s tactical response to terrorism and procedures for assistances in dealing with terrorism would pose a significant risk to security by revealing Australia’s tactics and capabilities.

15. Information in the document could jeopardise the capability of the Australian Defence Force (ADF), if released. This particular information pertains to the names of Defence personnel designated with Protected Identity Status.

16. I am of the view that if this information was disclosed it could be used by an adversary to identify and target key individuals involved in Defence operations, in order to gain access to operational information, thus compromising the capability of the ADF.

17. I am satisfied that the names of Defence personnel with Protected Identity Status, and information relating to their activities meets the requirements of section 33(a)(i) of the FOI Act and is therefore exempt.

Section 33 (a)(iii) International Relations

18. Section 33(a)(iii) of the FOI Act exempts documents that affect Australia's international relations. In regard to international relations the Guidelines state:

International Relations

5.36 The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relationships with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

19. Upon examination of the document, I found sensitive information relating to international relations.

20. I found that the document contains information relating to the value of gifts provided by several foreign governments, and whether they were retained by Defence recipients for personal use. If this information was released it could affect the ability of Australia to maintain good working relationships with those countries. Any damage to close relationships with other countries would seriously affect Defence's ability to deliver on its obligations to protect Australia's interests.

21. Under current department policy all gifts should be assigned a monetary value. In many cases the recorded value is arbitrary as the cost of the gift may not have any commercial value. For many countries it is the giving of the gift that represents the significant value that each nation places on the relationship. Revealing these arbitrary values may damage long-standing or emerging arrangements between nations.

22. After considering the above I am satisfied that the specific information meets the requirements of section 33(a)(iii) of the FOI Act and is therefore exempt.

Section 47G Public interest conditional exemptions—business

23. Upon examination of the documents, I identified business information of a number of third parties, particularly in relation to sponsorship arrangements. This information was provided in-confidence and in accordance with the relevant sponsorship agreements between the third parties and Defence. I found the material to be conditionally exempt under section 47G of the FOI Act which states:

(1) A document is conditionally exempt if it discloses under this Act information concerning a person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:...

- (b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

24. I note that this provision requires consideration of the reasonable expectation, rather than certainty, to be applied in deciding whether disclosure would cause the consequences specified.

25. The application of this exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that disclosing information related to the value of sponsorship provided by third parties could adversely impact the relationship between Defence and those businesses. The value of in-kind support and the long term relationships of mutual benefit between Defence and those companies is intangible. To reveal the value of sponsorship in this context would prejudice future sponsorship and in-kind support.

26. As such, I am satisfied that this information contained in these documents is conditionally exempt under section 47G of the FOI Act.

27. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

Public interest considerations – section 47G

28. In assessing whether disclosure is on balance, contrary to the public interest, I considered the Guidelines together with a range of factors 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*

29. 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, 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.

30. There is also a strong public interest in not releasing information that would unreasonably prejudice the future supply of information in relation to the administration of matters administered by Defence. Given Defence's strong links with industry, it is imperative that Defence be able to collect and retain sensitive commercial information without fear that the material would be released without authorisation.

Third party consultation

31. I decided to consult with a number of third parties regarding their information which was contained in the documents. In response to this consultation, the third parties objected to the release of their business information. I have agreed with those objections.

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

33. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the conditionally exempt material contained in the documents. Therefore, I have decided that it would be contrary to the public interest to release the information considered conditionally exempt under section 47G of the FOI Act.

frances.mcnamara  Digitally signed by
frances.mcnamara
Date: 2019.08.30 16:49:38 +10'00'

Frances McNamara
Accredited Decision Maker
Defence Finance Group