



Reference: Objective ID: **R32462898**

FOI 128/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the email of 16 November 2017, in which [REDACTED] sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act) of the Accredited Decision Maker's decision dated 6 November 2017.

2. The applicant's request was for access to the following documents under the FOI Act:

"[Item 1] A copy of the audit report conducted after allegations of collusion by Defence staff were made last year

[Item 2] A copy of any other internal investigations, reviews or similar conducted in relation to the collusion allegations

[Item 3] A copy of any recommendations made as a result of the audits/ investigations referred to above".

Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request."

Contentions

3. In his application, the applicant requested an internal review of the material considered exempt under section 47E [Public interest conditional exemptions - certain operations of agencies] of the FOI Act.

4. The applicant contended he accepts that there are reasonable grounds to withhold certain types of information, such as the identity of the whistleblower and the steps and procedures relevant to the conduct of the investigation. However, the applicant believes information related to the substance of the allegations themselves, and the findings of any investigation, should be disclosed.

5. The applicant stated "*Knowing in general terms what the allegations were about is unlikely to have a substantial impact on the operation of the department. It is already public knowledge that there were unsubstantiated allegations of corruption and fraud, and substantiated allegations of procurement breaches. Furthermore, the existence of the allegations and their general nature were voluntarily disclosed by the Defence Department in a September issue of the Navy News*".

6. The purpose of this statement of reasons is to provide the applicant with a fresh decision relating to the documents.

Reviewing officer

7. I am authorised to make this internal review decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

Documents subject to internal review

8. Taking into account the applicant's contentions, Items 1 and 3 are the subject of this internal review.

Internal review decision

9. After careful consideration, I have decided to vary the original decision by releasing further information in Items 1 and 3.

10. I have decided that the remaining withheld material is exempt under section 47E(a) [the conduct of tests, examinations or audits by an agency] and section 47E(d) [operations of an agency] of the FOI Act.

Material taken into account

11. In arriving at my decision, I had regard to:

- a. the scope of the applicant's request and subsequent internal review application;
- b. the original decision;
- c. the content of the documents subject to the internal review;
- d. relevant provisions in the FOI Act;
- e. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
- f. advice from Audit and Fraud Control Division.

Findings and reasons

Section 47E(a) of the FOI Act

12. Section 47E(a) of the FOI Act permits conditional exemption of a document where disclosure of the document would, or could reasonably be expected to, prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency.

13. I identified material that was provided to Defence for the purpose of conducting an audit review following an anonymous Public Interest Disclosure received by the Directorate of Investigations and Recoveries in April 2016. The review included an assessment of the allegations which relates to confidential information about employees and stakeholders of Defence.

14. For audit reviews to be effective, Defence relies upon the frankness and candour of its employees and stakeholders when providing information.

15. I am satisfied that if the individuals involved in the audit review become concerned that the information they provided could be released to the public, there is a high risk that

some employees and stakeholders would be less willing to provide information in relation to future audits. Any diminution in their willingness to make a comprehensive contribution can reasonably be expected to cause detriment or disadvantage, resulting in a much less effective audit.

16. Therefore, I consider that disclosure of this information could reasonably be expected to prejudice the effectiveness of future internal audit reviews. For this reason, I found this information is conditionally exempt under section 47E(a) of the FOI Act.

17. While I accept that there is a public interest in ensuring that Defence is transparent and conducts business in a proper manner, there is also a strong public interest in maintaining confidentiality of the people and areas involved in audit reviews. My public interest considerations are set out at paragraphs 23 to 28 below.

Section 47E(d) of the FOI Act

18. I identified information which was provided for the purpose of an audit review. Defence depends upon internal audits to review and measure practices and to ensure Defence conducts its business efficiently and effectively.

19. I consider it could reasonably be expected to have a substantial adverse effect on the Department's management of future complaints individuals such as the complainant or any other person involved with the allegations were identified.

20. Should this information become publicly available, it would not only damage the ability to obtain honest and candid information in future audit reviews, but there would also be a risk that future audits would be prepared with a public audience in mind. As a flow on effect, this would obstruct Defence's ability to conduct accurate and comprehensive audits in the future.

21. Taking into account the above, I consider that release of this information could reasonably be expected to prejudice the effectiveness of any future related audits by Defence. For this reason, this material is conditionally exempt under section 47E(d) of the FOI Act.

22. 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.

Public interest considerations – subsection 47E(a) and subsection 47E(d)

23. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines provided by the Information Commissioner, together with a range of factors that favour access to a document set out in subsection 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

24. I note that disclosure may promote some of the objects of the FOI Act as information held by the Government is a national resource. I also acknowledge that there is a public interest in releasing material that would inform public debate on the Defence's operations, in particular the conduct of management of complaints.

25. 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 strong public interest in maintaining the confidentiality of the material contained in the documentation. In my view, release of this information would cause a detriment to future complaints and audits, as employees and stakeholders may not provide candid information if they were aware that it could subsequently be released. Further, there is an expectation that Defence manages its information in a sensitive way and only grants access to such information on a need-to-know basis.

26. There is also a strong public interest in Defence maintaining the Commonwealth's good internal working relationships with its stakeholders. Disclosure of this information would have a substantial adverse effect on the proper and efficient conduct of the operations of Defence and it would not, in my view, be in the public interest.

27. Where I considered there was a genuine risk to the ability and effectiveness to conduct future audits, I have placed significant weight on this factor.

28. In coming to the above decision, I also considered subsection 11B(4) of the FOI Act. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents that matches the scope of the request. I therefore decided that it would be contrary to the public interest to release the information considered exempt, under subsections 47E(a) and subsection 47E(d) of the FOI Act.

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jarrod.howard1
Date: 2017.12.14
16:13:10 +11'00'

Mr Jarrod Howard
Decision Maker – Internal Review