



Australian Government
Department of Defence

2018/BN986717

FOI 128/18/19 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:

"Email correspondence on the DPN, relating to the unsafe interaction between the US Decatur and a PLA(N) vessel in the South China Sea in October. I would like to exclude media inquiries and reports from my request, and confine it to material created October 1-3 2018 inclusive."

Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents, and documents sent to and from you. Furthermore, Defence only considers 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 16 documents as matching the description of the request. The decision in relation to each document is detailed in the attached schedule of documents.

4. I have added an FOI reference number and serial number to each of the documents, which corresponds with the schedule.

Decision

5. I have decided to:

- a. release one document in full;
- b. deny access to four documents on the grounds that the material is considered exempt under section 47E [public interest conditional exemptions-operations of an agency] or section 33(a)(iii) [Documents affecting international relations] of the FOI Act; and
- c. partially release 11 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-operations of an agency] or section 33(a)(iii) [Documents affecting international relations] 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); and
- e. advice provided by Strategic Policy & Intelligence Group.

Reasons for decision

Absolute Exemption – section 33(a)(iii) – Documents affecting international relations

7. Section 33(a)(iii) exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. The information included in the document relates to the co-operative arrangements between the Commonwealth and other international governments, or agencies on behalf of their government.

8. Co-operation was provided by foreign nations with an expectation of confidentiality. The disclosure of this information could reasonably be viewed by international partners of the Commonwealth as a breach of trust and could diminish future co-operation from those nations.

9. Particular consideration has been made regarding the mosaic effect of releasing commentary and information that may on its own appear to be insignificant, however, when combined with other publicly available information divulges specific capabilities, activities, and mutual agreements. If released, this information could reasonably provide an adversary with a tactical advantage thereby diminishing the capability of the ADF to defend the Commonwealth and maintain international relations. Disclosure of this information could reasonably be expected to cause damage to international relations.

10. Taking into account the above, I find that disclosure of this national information would be an unreasonable disclosure and is exempt under section 33(a)(iii) of the FOI Act.

Conditional Exemption – Section 47E(d) – certain operations of agencies

11. Upon examination of the documents, I identified information, specifically commentary which is frank and shows candour in determining the appropriate course of action to take in relation to responding to contemporary events and identifying information of individuals.

12. 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.”

13. 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.

14. In this instance, identifying information of individuals would reveal the internal processes of an agency. This would make known the circumstance under which the proper and efficient procedures 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.

15. Therefore, it is considered that the disclosure of this information could reasonably be expected to have a substantial adverse effect on the proper and efficient operations of Defence. I consider the material is therefore conditionally exempt under section 47E(d) of the FOI Act.

Section 47E - Public interest considerations

16. I have found that fifteen of the identified documents are conditionally exempt under section 47E(d) of the FOI Act. Section 11A (5) 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'.

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

18. However disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

19. 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 future, and
- b. the management function of an agency.

20. While I accept there is a public interest in the internal procedures of Defence in the management of contemporary events and that Defence undertakes its functions in a transparent and proper manner, on balance, it would be contrary to the public interest to release formative frank commentary around contemporary events as would reasonably be expected to diminish rather than improve efficiency.

21. 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(d) of the FOI Act.

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

Section 22 (where documents are being denied in full)

23. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to you with deletions, but have decided against this course of action, as the document would be meaningless and of little or no value once the exempt material is removed.

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.

 Digitally signed
by
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NJ Youseman
CAPT, RANR
Accredited Decision Maker
SP&I Group