



**Australian Government**  
**Department of Defence**

Reference: fR5772008

**FOI 254/17/18 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 request copies of permits for the export of military equipment from Australia to Saudi Arabia for the period 1 January 2016 to 31 December 2017.*

*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.”*

**FOI decision maker**

2. I am the accredited 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.
4. The decision in relation to each document is detailed in a schedule of documents.
5. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

**Decision**

6. I have decided to:
  - a. partially release 16 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 47G [public interest conditional exemptions – business] 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**

7. 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. consultation with third parties whose information is contained in the documents.

## Reasons for decision

### Section 47G – business

8. Upon examination of the documents, I identified business information of a third party. Under section 47G of the FOI Act, a document is conditionally exempt if it discloses 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:*

*(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.’*

9. I note that the use of the word ‘could’ in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.

10. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that the effect of disclosing the identified material could have an adverse effect on a company as disclosure of their commercial activities and methods could diminish the competitive nature of the business and could affect the profitability of their business operations.

11. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G of the FOI Act.

### Sections 47G - Public interest considerations

12. In assessing whether disclosure of the conditionally exempt material is, on balance contrary to the public interest, I considered the guidelines together with a range of factors that favour access to the material, as set out on section 11B(3) of the FOI Act.

13. While disclosure may promote some of the objects of the FOI Act, in that consideration has been given to release I do not consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities.

14. I have also taken into account that disclosure of the specific information could be used to undermine certain processes, which in turn could affect the ability of Defence to perform the regulatory function as it relates to the consideration of applications for the export of controlled goods and technology.

15. In addition there is a strong public interest in not releasing information that would unreasonably affect a business. I took into account the nature of the material and found that its disclosure in this instance would not significantly promote the objects of the Act, or inform debate on a matter of public importance. However, disclosure has the potential to cause harm to the business and risk Defence’s relationship with businesses in performing the regulatory function as it relates to the export of controlled goods and technology.

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

17. On balance, I have found that it would be contrary to the public interest to release this information and have decided to exempt the material under sections 47F and 47G of the FOI Act.

**Third party consultation**

9. I decided to consult with third parties regarding their information which was contained in the documents. In response to this consultation, some of the third parties have objected to the release of their business/personal information. The department is required to advise the third parties of my decision. Documents will be provided when all review rights have been exercised.

**Clarification/Context Statement**

10. The documents included in this decision reflect the agreed revised scope of the request following consultation with the applicant. The scope of the original request was deemed to be too large and would have been subject to a practical refusal under section 24 of the FOI Act.

11. It should be noted that the documents that fall within the scope of this request are not publicly available and are only provided to the applicant for an export permit at the completion of an assessment process where an application is approved.



Mr Damien Chifley  
Accredited Decision Maker  
Strategic Policy and Intelligence Group

13 March 2018