



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

Reference: 30311510

**FOI 290/16/17 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 Department of Defence has approved four military exports to Saudi Arabia in the past year and the Australian government is actively seeking more. Defence Industry Minister Christopher Pyne visited Riyadh in December 2016 to promote Australian materiel to Saudi Arabian government figures.*

*Could you provide:*

*a) The itinerary of the Minister for Defence Industry for his visit to Saudi Arabia in December 2016; [Item 1]*

*b) Submissions to the Minister for Defence Industry and media/parliamentary talking points in relation to the above-mentioned visit; [Item 2]*

*c) Submissions to the Minister for Defence Industry or Minister for Defence since January 2016 in relation to military exports to Saudi Arabia.” [Item 3]*

*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**

1. I am the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

**Documents identified**

2. I identified five documents as matching the description of the request.
3. The decision in relation to each document is detailed in a schedule of documents.
4. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

**Decision**

5. I have decided to:
  - a. partially release five 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 33 [documents affecting national security, defence or international relations], section 37

[documents affecting enforcement of law and protection of public safety], section 47C [deliberative processes - conditional exemption], section 47E [certain operations of agencies - conditional exemption], section 47F [personal privacy - conditional exemption], and section 47G [business information - conditional exemption] 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 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)
  - e. third party consultation, and
  - f. advice provided by International Policy Division and Defence Industry Policy Division.

### **Reasons for decision**

#### **Section 33(a)(iii) – Documents affecting international relations**

7. I have identified information contained in Items 2 and 3 that, if released, would, or could reasonably be expected to, cause damage to international relation of the Commonwealth. Paragraph 5.36 of the Guidelines describes international relations as the ability of the Australian Government to maintain good working relations with other governments and international organisations.

8. The documents contain information relating to Australia's relationships with foreign governments and their officials. Release of this information could reasonably be expected to cause damage to those relationships. Any damage to international confidence and close relationships with other countries would seriously affect Defence's ability to deliver on its obligations to protect Australia's interests. Further, this information is not readily available to the public. As such any release of the information would cause a loss of trust and confidence in the Australian government and foreign officials may be less willing to engage with Australian Government officials and Australian businesses in the future. The national interest in not disclosing this information outweighs interest in disclosure.

9. Accordingly, I consider the release of the information so marked would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth and exempt the release of this information under section 33(a)(iii) of the FOI Act.

#### **Section 37(1)(c) – Documents affecting enforcement of law and protection of public safety**

10. Item 1 contains the meeting and accommodation locations that were used in Saudi Arabia.

11. In a climate of increasing violence and terrorism requiring heightened security, the release of such details could provide adversaries with information that allows them to make these personnel a potential target for violence. Given the current security concerns in this region I have a reasonable apprehension that danger could occur to people that undertake future official trips should this information become known.

12. Accordingly, I consider the information identified in Item 1 as exempt under s37(1)(c) of the FOI Act.

### **Section 47C – Deliberative processes**

13. I found that the documents contain proposed correspondence specifically related to the request. I considered whether this information may be exempt under subsection 47C(1) of the FOI Act.

14. Subsection 47C(1) of the FOI Act states '*A document is conditionally exempt if its disclosure under the Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative process involved in the functions of...an agency... or a Minister.*' Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

15. I have taken into account the Guidelines noting that one consideration in the exemption under section 47C is whether the document includes content of a deliberative matter. Upon examination of the documents I identified that they contained information which, if released, would disclose deliberative matter, namely information in the nature of opinion and advice that has taken place in the course of the functions of an agency, the disclosure of which would be contrary to the public interest.

16. I then considered the question of whether the information is purely factual material. In relation to section 47C considerations under the FOI Act, I have taken into account the Guidelines that 'purely factual material' that would not be regarded as deliberative matter would include:

- content that is merely descriptive.
- incidental administrative content.
- procedural or day-to-day content.
- the decision or conclusion reached at the end of the deliberative process.
- matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.

17. I have also taken into account that while purely factual material is not considered to be deliberative matter, where a document contains factual material that is related to the provision of policy advice and elaborates its context or likely impact, it may potentially come within the deliberative document exemption.

18. Taking the above into consideration, I am satisfied that parts of the documents contain deliberative matter that is conditionally exempt under subsection 47C(1) of the FOI Act.

### **Section 47E(d) – Certain operations of agencies**

19. Section 47E (d) of the FOI Act states that ‘*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.’*

20. Upon examination, I found that the documents contained information about sensitive issues affecting the Defence organisation. The exempt material provides information on the way Defence performs its functions, some of which is not publically known and limited to certain people within the organisation on a need-to-know basis. The release of this information, on the way Defence performs its functions, could reasonably be expected to adversely affect the proper and efficient conduct of Defence’s operations.

21. Taking the above into consideration, I am satisfied that the material is conditionally exempt pursuant to subsection 47E (d) of the FOI Act.

### **Section 47F – Personal privacy**

22. Examining the documents, I identified information, specifically names and phone numbers of individuals.

23. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- a. the extent to which the information is well known
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- c. the availability of the information from publicly accessible sources
- d. the effect the release of the personal information could reasonably have on the third party.

24. I found that the:

- a. specific personal information listed is not well known
- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents, and
- c. information is not readily available from publicly accessible sources.

25. The release of the names and phone numbers of personnel identified in the document could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

### **Section 47G – Business information**

26. Upon examination of the documents, I identified business information of a third party.

27. As part of my decision making process I undertook third party consultation. I considered the results of the third party consultation when making my decision.

28. 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 the 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....’*

29. I note that the use of the word ‘could’ in this provision requires consideration of the reasonable expectation rather than certainty to be applied in deciding whether disclosure would cause the consequences specified.

30. 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 the company as disclosure of their commercial activities and methods could diminish the competitive nature of the business and could effect the profitability of their business operations.

31. Taking the above into consideration, I am satisfied that the documents contain material that is conditionally exempt pursuant to section 47G of the FOI Act.

### **Public Interest Conditional Exemption Considerations – sections 47C, 47E 47F, 47G**

32. Section 11A (5) of the FOI Act provides that if a document is conditionally exempt, it must be disclosed *‘unless (in the circumstances) access to the document at the time would, on balance, be contrary to public interest.’*

33. 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 a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

34. I consider that disclosure may promote some of the objects of the FOI Act, as information held by Government is a national resource. The disclosure of the advice and opinions relating to possible responses to questions for the Minister’s consideration would not, in my view, increase public participation in Government processes nor would it, increase scrutiny or discussion of Government activities.

35. While I considered that disclosure may increase scrutiny or discussion of Defence activities, I found disclosure of some information in the document would reveal sensitive considerations associated with Defence activities. Disclosure of some information in the document would also reveal sensitive matters affecting the Defence organisation, particularly those related to relationships with foreign governments and commercial entities.

36. While I accept that there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the confidentiality of some material contained in the documents. Disclosure of the sensitive or

confidential material would potentially impact and harm the Commonwealth's ability to effectively manage its business and foreign relations. While I found that disclosure may increase scrutiny or discussion of Defence activities, I found the public interest in protecting the information would far outweigh the public interest in the release of the identified material.

37. Further, paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I found particularly relevant in considering disclosure of the identified material are that, if released, this information could reasonably be expected to:

- a. prejudice the protection of an individual's right to privacy;
- b. prejudice an agency's ability to obtain confidential information; and
- c. prejudice an agency's ability to obtain similar information in the future.

38. There is also a strong public interest in Defence maintaining the Commonwealth's security, good commercial and international relationships, and not releasing information that would harm the security of the Commonwealth. Full disclosure of the documents would have a substantial adverse effect on the proper and efficient conduct and operations of Defence and this would not, in my view, be in the public interest.

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

40. On balance, I have found that it would be contrary to the public interest to release the information considered conditionally exempt under sections 47C, 47E, 47F and 47G of the FOI Act.

### **Further Information**

41. One of the documents matching the scope of this request was classified. I have declassified the version of the document that is approved for release.

42. 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.

**nicola.viney**

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