



AB35322049

FOI 413/17/18 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:

“Request for a un-redacted copy of the NOSB brief for the VCDF(drafted approximately 2016 by LTCOL Allan Black) related to the Lebanese Civil War in late 1983 to mid-1984.

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 me. Only the final version of the document is in scope.”

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 one document as matching the description of the request.

Decision

4. I have decided to partially release one document in accordance with section 22(1)(b) of the FOI Act [access to edited copies with exempt or irrelevant matter deleted], on the grounds that the deleted material is considered exempt under section 7(2A)(b) [exemption of certain persons and bodies], section 33(a)(i) [documents affecting national security], section 47C(1) [deliberative processes], section 47E(d) [public interest conditional exemptions-certain operations of agencies] and section 47F(2) [public interest conditional exemptions-personal privacy] of the FOI Act.

Material taken into account

5. In making my decision, I had regard to:
- a. the terms of the request
 - b. the content of the identified document 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. advice received from the Nature of Service Branch, within Military Strategic Commitments, in the Vice Chief of the Defence Force Executive, Strategic Policy and Intelligence Group, and
 - f. comments from the Department of Foreign Affairs and Trade.

Reasons for decision

Section 7(2A)(b) – Exemption of certain persons and bodies

6. Section 7(2A)(b) of the FOI Act exempts a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information. Paragraph 2.18 of the Guidelines notes the exemption extends to a part of the document that contains the extract from or a summary of an intelligence agency document or a defence intelligence document. The remainder of the document is not exempt on the same basis, and access may have to be given after deletion of the exempt material under section 22.

7. This document contains extracts and references from Australian intelligence agencies and therefore I consider portions of this document exempt under section 7(2A)(b) of the FOI Act.

Section 33(a)(i) – Documents affecting national security

8. Section 33(a)(i) of the FOI Act exempts documents if disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth. Paragraph 5.27 of the Guidelines notes reasonably expected as there being ‘real’ and ‘substantial’ grounds for expecting the damage to occur which can be supported by evidence or reasoning. Paragraph 5.29 of the Guidelines describes security of the Commonwealth as broadly referring to the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests.

9. The document within the scope of this request contains information that could reasonably be expected to cause damage to the security of the Commonwealth. The document details classified information, including sources, methods of collection and subsequent intelligence briefs produced by Joint Operations Command. The release of this information can be reasonably expected to prejudice national security. Further, the document contains information pertaining to government and military decision making outlining forthright advice which was provided within the bounds of the national security framework. Disclosure of this information may compromise the ability of key decision makers to provide such advice therefore degrading the decision making quality of information. Therefore, I consider portions of this document exempt under section 33(a)(i) of the FOI Act.

Section 47C – Deliberative processes

10. Section 47C(1) of the FOI Act states ‘A document is conditionally exempt if its disclosure under this 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, or the Government of the Commonwealth.’ Paragraphs 6.52 through 6.88 of the Guidelines outline what constitutes deliberative matter and I note that some of the information contained in this document meets the deliberative assessment. I have balanced the deliberative matter against purely factual material, such as descriptive, administrative, routine, or information not pertaining to the deliberative matter. Where factual material was key to the provision of advice or decision making, then it is reasonable to expect that it will fall under a deliberative matter exemption. Therefore I consider portions of this document conditionally exempt under section 47C(1) of the FOI Act.

11. 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. My public interest considerations are detailed below.

Section 47E – Certain operations of agencies

12. Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency. Paragraph 6.123 of the Guidelines state that, where the document relates to certain operations of agencies, the decision maker must address whether the predicted effect impacts on the agency's 'proper and efficient' operations; that is, the agency is undertaking its expected activities in the expected manner.

13. Releasing the responses from Defence reviews, could reasonably be expected to affect the willingness of individuals to provide personal recollections and opinions to Defence in a frank, open and honest way. I am satisfied that the information would have an adverse effect on the proper and efficient conduct of Defence during its nature of service classification reviews and find the information conditionally exempt under section 47E(d) of the FOI Act.

14. My public interest considerations are detailed in paragraphs 19 through 25 below.

Section 47F - Personal privacy

15. Upon examination of the document, I identified names, personal recollections of experience and subjective opinion belonging to persons other than the applicant. This material satisfies the definition of personal information as outlined in the Guidelines, sharing the same definition as the Privacy Act under the framework of the Australian Privacy Principles.

16. Section 47F(2) of the FOI Act states 'in determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters: the extent to which the information is known; 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; the availability of the information from publicly accessible sources; any other matters that the agency or Minister considers relevant.

17. Using the criteria as outlined above, I checked against readily available public sources and determined that the exempt material is not well known. I consider the release of the personal information within this document would be an unreasonable disclosure of personal information and I find portions of the document conditionally exempt under section 47F(2) of the FOI Act.

18. My public interest considerations are detailed below.

Public interest factors – sections 47C, 47E and 47F

19. Section 11B(3) of the FOI Act states "Factors favouring access to the document in the public interest include whether access to the document would do any of the following: promote the objects of this [FOI] Act; inform debate on a matter of public importance; promote effective oversight of public expenditure; allow a person to access his or her own personal information".

20. The main factor favouring disclosure is that releasing the information may promote some of the objectives of the FOI Act, as information held by government is a national resource. I also note that some of the information may increase scrutiny or discussion of Defence activities.

21. Some of the factors against disclosure that I find particularly relevant to this request are that release of the information could reasonably be expected to prejudice:

- a. the protection of an individual's right to privacy

- b. the interests of an individual or group of individuals
- c. an agency's ability to obtain confidential information
- d. an agency's ability to obtain similar information in the future
- e. the management function of an agency, and
- f. the need to adhere to the Australian Privacy Principles.

22. I find disclosure of the conditionally exempt section 47C information would reveal sensitive considerations associated with Defence activities in relation to nature of service classifications. While I accept there is a public interest in ensuring Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the robust advice, options and recommendations provided as part of these reviews. While I considered that disclosure might increase scrutiny of Defence activities, I feel the public interest is better served in protecting the opinions and advice considered when deliberating reviews involving National Service Classification.

23. Releasing personal submissions and advice that were voluntarily provided as part of a confidential process would affect the integrity of Defence and inhibit its ability to obtain open and frank submissions and undermine the confidentiality of future reviews. If the personal recollections of experience and subjective opinion of individual's other than the applicant were disclosed, it would constrain Defence's proper and efficient operations and prejudice an individual's right to privacy. Therefore, I find the public interest factors against disclosure of the conditionally exempt section 47E and 47F information far outweigh the public interest factors in favour of disclosure at this time.

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

25. I find the information being disclosed as part of this request sufficiently serves the public interest and promotes the objects of the FOI Act. Therefore, on balance, I find the public interest factors against disclosure outweigh the factors for disclosure and consider portions of the document exempt under sections 47C, 47E and 47F of the FOI Act.

Further information

26. As the document within scope of this request is classified and contains a dissemination limiting marker, I have declassified the version of the document that is approved for release.

nicholas.hogan Digitally signed by
nicholas.hogan
Date: 2018.05.29 13:11:10
+10'00'

NA Hogan
Group Captain
Accredited Decision Maker
Vice Chief of the Defence Force Executive