



FOI 464/17/18 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:

“1. Briefs from 1 April 2018 to 15 May 2018 relating to the meeting in Canberra in May 2018 between Minister Pyne and the UAE Foreign Minister Abdullah bin Zayed bin Sultan Al Nahyan;;

2. Permits granted for the export of military equipment from Australia to the United Arab Emirates from 1 January 2017 to 16 May 2018,

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. Furthermore, only final (the latest) versions of documents are required.”

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 17 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 17 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 47F [Public interest conditional exemptions-personal privacy], section 47E (d) [public interest conditional exemptions-certain operations of agencies], section 47G [Public interest conditional exemption – business] and section 33(a)(iii) [Documents affecting international relations of the Commonwealth] of the FOI Act;
- 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, Defence International Policy Division, Air Force Headquarters, Army Headquarters and Navy Strategic Command.

Reasons for decision

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

8. Upon examination of the documents, I identified information that, if released would or could reasonably be expected to cause damage to the international relations 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.

9. Paragraph 5.37 of the Guidelines says that “the expectation of damage to international relations must be reasonable in all circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship”

10. The documents contain information relating to Australia’s relationship with a foreign government and its officials. Release of this information could reasonably be expected to cause damage to this relationship as it relates to the policies and activities of this government that are either not readily available to the public or acknowledged by that foreign government. The release of this information would cause a loss of trust and confidence such that foreign officials would likely be less willing to engage with the Australian Government. This would cause damage to an important relationship of the Australian Government.

11. 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 from release under section 33(a) (iii) of the FOI Act.

Section 47E - Certain operations of agencies

12. Upon examination of the documents, I identified information related to the administration of Defence’s statutory authority to assess and issue exports permits. More specifically the information contained in these documents includes permit numbers for approved exports of controlled goods. I considered whether this information may be exempt under subsection 47E (d).

13. Subsection 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...have a substantial adverse effect on the proper and efficient conduct of an agency.*’ Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

14. The use of the word ‘could’ in this provision requires no more than a degree of reasonableness being applied in deciding whether disclosure would cause the consequences specified. The reasonable expectation refers to information on how Defence assesses export permit applications, including the assessment of risk that a proposed export may be diverted to end users whose policies and activities are in opposition to the security, defence or international relations of Australia.

15. I am satisfied that disclosing export permit numbers could reasonably be expected to have a substantial adverse effect on the proper and efficient operations of the Commonwealth

in administering export controls. The release of this information would divulge permit numbers for approved permits that could be used by others to attempt to export controlled goods without appropriate approval from the Commonwealth.

16. Taking the above into consideration I am satisfied that the material is conditionally exempt under subsection 47E (d) of the FOI Act.

Section 47F - Personal privacy

17. Examining the documents, I identified personal information, specifically the names of foreign officials.

18. When assessing whether the disclosure of this 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 publically accessible sources
- d. The effect the release of the personal information could reasonably have on the third party.

19. I found that the personal information listed is not well known or readily available and that the individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents.

20. As such I consider that the release of that personal information would be an unreasonable disclosure of personal information and conditionally exempt under section 47F (1) of the FOI Act.

Section 47G – Business information

21. In examining the documents I identified business information of a number of third parties.

22. 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.

23. Under section 47G of the FOI Act, information 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...’*

24. This provision requires consideration of the reasonable expectation, rather than certainty, to be applied in deciding whether disclosure would cause the consequences specified.

25. This application of this exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that disclosing information related to the export activities of third parties could adversely affect the business affairs and profitability of those third parties.

26. As such, I am satisfied that this information contained in these documents is conditionally exempt under section 47G of the FOI Act.

Public Interest Conditional Exemption Considerations – sections 47E, 47F and 47G

9. 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.*’

10. 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.

11. Although I considered that disclosure may increase scrutiny of Defence’s administration of export control regulations, I found that disclosure of information related to the activities of commercial entities that has been provided to the Commonwealth could reasonably be expected to prejudice the Commonwealth’s ability to obtain similar information in the future.

12. On balance, I have found that it would be contrary to the public interest to release the information considered conditionally exempt under section 47G of the FOI Act.

13. With regards to the personal information of foreign officials contained in these documents, conditionally exempt under section 47F of the FOI Act, I do not consider there to be any relevant public interest factors favouring disclosure as listed in section 19 of the Guidelines. More specifically, I do not consider this information, if released, would inform debate on matters related to export control administration, enhance scrutiny of government decision making or promote the objects of the FOI Act more broadly.

14. As such I have found that it is not in the public interest to release the information considered conditionally exempt under section 47F of the FOI Act.

15. With regards to the export permit numbers contained in these documents, conditionally exempt under section 47E (d) of the FOI Act, I do not consider there to be any relevant public interest factors favouring disclosure as listed in section 19 of the Guidelines. More specifically, I do not consider this information, if released, would inform debate on matters related to export control administration, enhance scrutiny of government decision making or promote the objects of the FOI Act more broadly.

16. As such I have found that it is not in the public interest to release the information considered conditionally exempt under section 47E (d) of the FOI Act.

Further Information

17. Some of the documents contained a dissemination limiting marker. As the documents are approved for public release these markers have been struck through.

Digitally signed by
StuartSpence
 Date: 2018.09.03 16:41:13
 +10'00'

Stuart Spence
 Accredited Decision Maker
 Strategic Policy and Intelligence Group