



Reference: Objective ID: R35405143

FOI 464/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the email of 9 September 2018, in which [REDACTED] sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act) of the Accredited Decision Maker's decision dated 3 September 2018.
2. The applicant's request was for access to the following documents under the FOI Act:
 - “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.”

Contentions

3. In summary, the applicant requested an internal review of the section 47G exemptions.
4. The purpose of this statement of reasons is to provide the applicant with a fresh decision relating to the documents.

Reviewing officer

5. I am authorised to make this internal review decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

Documents subject to internal review

6. Taking into account the applicant's contentions, 17 documents are the subject of this internal review.

Internal review decision

7. After careful consideration, I have decided to uphold the original decision by:
- a. partially releasing 17 documents in accordance with section 22 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 exemptions – business] of the FOI Act.
8. Further to the above, irrelevant material, as referred to in the scope of the FOI request, was removed in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

9. In arriving at my decision, I had regard to:
- a. the scope of the applicant's request and subsequent internal review application;
 - b. the original decision;
 - c. the content of the documents subject to the internal review;
 - d. relevant provisions in the FOI Act;
 - e. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
 - f. original consultation responses provided by third parties.

Findings and reasons

Section 47G

10. Subsection 47G conditionally exempts a document if its disclosure under the FOI Act would disclose 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 adversely affect the business or commercial or financial affairs; or
 - b) could reasonably be expected to prejudice the future supply to the Commonwealth.

11. 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. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself.

12. Upon examination of the material, I identified information as permits relating to export activities between third parties and the Department of Defence. I found that this information is related to the business affairs of a lawful business of various third parties.

13. I determined that this information is not publicly available and should the material be released, it could reasonably be expected to have an adverse effect on commercial and financial business affairs of various third parties. I also consider that if this material is released against future authors' wishes it could decrease their cooperation with Defence.

14. Consequently, I have decided that the material is conditionally exempt under section 47G of the FOI Act.

Public interest considerations – section 47G

15. In determining whether to release the information conditionally exempt under section 47G, I considered the Guidelines together with a range of factors that favour access to a document set out in sub-section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

16. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to the public interest. Specifically, I considered if disclosure of the documents would:

- a. promote the objects of the FOI Act;
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure; and
- d. allow a person to access her or his personal information.

17. I consider that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. I consider, however, the disclosure of the material would not increase public participation in government processes. Further, I consider that disclosure of the information would not increase scrutiny or discussion of government activities.

18. While I accept 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 the material. In addition, it could reasonably be expected that disclosure of the material could harm the interests of an individual or business groups. It could also reasonably be expected to prejudice and agency's ability to obtain similar information in the future.

19. Furthermore, I consider that release of the information could harm the commercial and financial affairs of a third party and that the harm to the third party's activities and interests outweighs any benefits that may be gained by public scrutiny.

20. 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 sections 47G of the FOI Act.

Further Information

21. The Defence Export Office has advised that there is a public website that provides statistical information such as permit type and number of permits. You can view the information about permits at: <http://www.defence.gov.au/ExportControls/Statistics.asp>

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Decision Maker – Internal Review