



**BN49509866**

**DEFENCE FOI 010/22/23 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 kindly request a copy of all emails and supporting attachments, sent to/from bcc/cc’d authors and contributors of CAF Brief document SB21-001257, titled “UNIDENTIFIED AERIAL PHENOMENA” for the period 27 October 2021 to 4 July 2022 (inclusive), that contain any of the following keywords: Unidentified Aerial Phenomena; UAP; Unidentified Flying Object; UFO; Unidentified Flying Objects; UFOs; Unauthorised Aircraft Movement; UAM; Unauthorised Aircraft Movements; UAMs; Unusual Aerial Sighting; Unidentified Phenomena, Unexplained Aerial Phenomena. I also kindly request that personal details be limited to the full names of individuals involved in any applicable FOI response.”*

**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/document number to each of the documents, which corresponds with the schedule.

**Exclusions**

6. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

## Decision

7. I have decided to:
- a. release eight documents in full;
  - b. partially release nine 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 sections 47C [public interest conditional exemptions-deliberative processes] and 47F [public interest conditional exemptions-personal privacy] of the FOI Act; and
  - c. remove irrelevant material under section 22 of the FOI Act.

## Material taken into account

8. 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; and
  - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

## Reasons for decision

### Section 22 – Edited copies with exempt or irrelevant matter deleted

9. Section 22 of the FOI Act provides that if;
- (a) an agency or Minister decides:
    - (i) *to refuse access to an exempt document; or*
    - (ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access;*
- and*

10. It is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

11. The documents provided contain names, personal email addresses, mobile telephone numbers and signatures of others that do not relate to the scope of the request. I consider this information as outside the scope of this request.

12. On 15 July 2022, consent was provided from the applicant to remove material within the documents located in scope of the request which does not relate to the following key words: Unidentified Aerial Phenomena; UAP; Unidentified Flying Object; UFO; Unidentified Flying Objects; UFOs; Unauthorised Aircraft Movement; UAM; Unauthorised Aircraft Movements; UAMs; Unusual Aerial Sighting; Unidentified Phenomena, Unexplained Aerial Phenomena.

13. Considering all of the above, I decided that it was reasonably practicable to remove the material that did not fall within scope of this request and release the documents in that form.

### Section 47C – Deliberative Processes

14. Upon examination of the documents, I found that they contained information relating to opinions, advice and recommendations regarding the preparation of senate estimates briefs, and pre-briefings. I found the material to be conditionally exempt under subsection 47C(1) of the FOI Act which 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.*

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

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

16. I have also taken into account further detail in the Guidelines (6.73) that advise “‘*purely factual material*’ does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it’.

17. The documents contain material communicating opinion, advice and recommendations for the preparation of senate estimates briefs and pre-briefings. These documents contain the processes of dealing with particular issues, and proposing options for consideration closely intertwined with factual information.

18. There is a risk, release of the deliberative matter contained in the documents would harm the smooth operation of Defence business including the ability for Defence to present and communicate frank preliminary advice at the highest levels to the Government.

19. Taking the above into consideration, I am satisfied that this information contained in these documents is conditionally exempt under section 47C of the FOI Act.

20. 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 that time would, on balance, be contrary to the public interest.

### **Public interest considerations – Section 47C**

21. In assessing whether disclosure is on balance, contrary to the public interest, I considered the Guidelines together with a range of factors set out in section 11B(3) of the FOI Act, which favours access to a document:

- (a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) *inform debate on a matter of public importance;*
- (c) *promote effective oversight of public expenditure;*

22. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

23. 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 some material contained in the documents while they are still in the deliberative stages. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

24. I consider that there is a strong public interest in preventing an adverse effect on the ability of Defence to both receive and prepare frank advice, the premature release of which could impede the effective completion of the matters under deliberation.

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

26. After weighing all of the above, I consider that, on balance the public interest factors against disclosure outweigh the factors for disclosure of the conditionally exempt material in the documents. Accordingly, I have decided that the specific material is exempt under section 47C of the FOI Act.

### **Section 47F - Personal Privacy**

27. Upon examination of the document, I identified information, specifically the name of an individual other than the applicant, located within document 16.

28. 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.

29. I found that the:

- (a) specific personal information listed is not well known
- (b) the individual whose personal information is contained in the document is not widely known to be associated with the matters dealt with in the documents
- (c) information is not readily available from publicly accessible sources.

30. The release of the name 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 individual would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

#### **Public interest considerations – Sections 47C and 47F**

31. I have found that one of the identified documents is conditionally exempt under sections 47C and 47F of the FOI Act. 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’.

32. I find disclosure of the conditionally exempt sections 47C and 47F information would reveal sensitive considerations associated with Defence activities in relation to a personal privacy of a third party other than the applicant. 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 processes. While it is considered that disclosure might increase scrutiny of Defence activities, the public interest is better served in protecting the opinions and advice considered in the deliberative process.

33. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource.

34. However, disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

35. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- (a) the protection of an individual’s right to privacy
- (b) the management function of an agency

36. 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 47C and 47F of the FOI Act.

37. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

**Further Information**

38. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

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