



## DEFENCE FOI 003/22/23 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 file attachments, sent to/from | bcc/cc'd Gene Elliott, Flight Lieutenant, Staff Officer to Director Air Defence & Space (DGADS-AF), Staff Officer to Director General Space Domain Review (DGSDR) for the period 27 October 2021 to 30 June 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; unusual air traffic, Whish-Wilson. 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 33 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 one document in full;
  - b. partially release 32 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], 47E(c) [public interest conditional exemptions-certain operations of agencies], 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;
  - 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 47C – Deliberative processes**

9. Upon examination of the documents, I identified two documents containing information relating to opinions, advice and recommendations regarding senate estimate 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.*

10. 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 purpose of, a deliberative process.

11. 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”.

12. 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.

13. 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

#### **Sections 47E – Certain operations of agencies**

14. Upon examination of the documents, I identified 32 documents containing information relating to Defence personnel, including names, contact numbers and email addresses. Subsections 47E(c) of the FOI Act states:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

*(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*

15. The Australian Information Commissioner has issued Guidelines under section 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. In relation to subsection 47E(c) of the FOI Act, the Guidelines explain that, where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address whether:

- a. an effect would reasonably be expected following disclosure; and
- b. the expected effect would be both substantial and adverse.

16. For this exemption to apply, the documents must relate to either:

- i. the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; and
- ii. the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

17. The information contained within the document included information that identified personnel who have been involved, or contributed, in the preparation of Senate Estimate Brief SB21-001257 and material relating to Unidentified Flying Objects or Unidentified Aerial Phenomena. Releasing this information could reasonably be expected to increase the likelihood of these individuals being contacted directly, or harassed, regarding their involvement in the subject matter.

18. In conclusion, I am satisfied that the documents are conditionally exempt under section 47E(c) of the FOI Act.

19. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

### **Sections 47F – Personal Privacy**

20. On review of one document, I identified information, specifically the name of a third party other than the applicant. I found the material to be conditionally exempt under section 47F of the FOI Act.

21. 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 publicly accessible sources; and
- d. any other matters that the agency or Minister considers relevant.

22. Against the above criteria I found:

- a. that the specific personal information is not well known;
- b. the individuals whose personal information is contained in the document is not known to be associated with the matters dealt with in the documents;
- c. the information is not readily available from publicly accessible sources;
- d. release of the information may cause undue stress on the third parties, or cause them to be directly contacted in relation to the material;

22. Taking into account the above factors, I consider that the release of the material would be an unreasonable disclosure of personal information of individuals other than the applicant and could reasonably be expected to cause harm to their privacy. I therefore have decided that this information is conditionally exempt under section 47F(1) of the FOI Act.

23. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

**Public interest considerations – Sections 47C, 47E, and 47F**

24. 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;*
- (d) allow a person to access his or her own personal information*

25. 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.

26. 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 or harm:

- a. the protection of an individual's right to privacy;
- b. the interests of an individual or group of individuals; and/or
- c. the management function of an agency.

27. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is a 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. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

28. While I consider that release of the material removed under sections 47E may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. There is also a public interest in maintaining the confidentiality of the names and contact details of Defence personnel who assist in or prepare Senate Estimate Briefs. This public interest extends to Senate Estimate Brief SB21-001257, and material relating to Unidentified Flying Objects or Unidentified Aerial Phenomena, where there is an expectation that Defence manages personnel information in a sensitive way.

29. While I consider that release of the material removed under sections 47F may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure. Furthermore, the public interest is better served in protecting the privacy of individuals whose personal details are contained within these documents from release to the public at large.

30. Noting all of the above, I consider that, on balance the public interest factors against disclosure outweigh the factors for disclosure. I have therefore decided that it would be contrary to the public interest to release the information considered exempt under subsections 47C, 47E(c) and 47F of the FOI Act

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

#### **Further Information**

32. The Department of Defence does not have a protocol for reporting or recording of Unidentified Aerial Phenomena (UAP) or Unidentified Flying Objects (UFO). The Air Force ceased handling reports of UAP or UFO in 1996 after determining that there was no scientific or other compelling reason for the Air Force to continue to devote resources to the recording and investigation of UAP or UFO.

33. 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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