



DEFENCE FOI 357/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] [the applicant], received on 12 November 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982 (Cth)* (FOI Act):

I hereby request access to documents related to the planning, authorisation, and execution of the Defence Force flypast event by the 'Air Force Fast Jets' from RAAF Williamtown 1SQN and 3SQN, specifically the rehearsal conducted on 21 October 2024 and the public display conducted on 22 October 2024. The context of the flypast event in question is detailed at the below link:

- <https://www.airforce.gov.au/news-events/events/flypast-support-his-majesty-kings-visit-australia>

Scope of Request

Specifically, I seek access to the following documents:

1. Flight Paths and Logs:

- *Documents reflecting the flight paths and logs of aircraft involved in both the rehearsal flypast (21 October 2024) and the display flypast (22 October 2024).*

2. FPAP Approval Documents:

- *Records associated with the FlyPast Approval Process (FPAP) approval for both the rehearsal and display flypasts, including any formal authorisations issued.*

3. Assessments Related to FPAP Approval:

- *Any assessments conducted to support the FPAP approval for both the rehearsal and display flypasts, specifically those addressing noise, environmental impact, or potential effects on nearby residential areas.*

FOI decision maker

4. I am the authorised officer pursuant to section 23 [Decisions to be made by authorised persons] of the FOI Act to make a decision regarding this FOI request.

Documents identified

5. I have identified 15 documents as falling within the scope of the request.
6. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

7. Signatures 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

8. I have decided to:
 - a. Release one (1) document in full
 - b. Partially release twelve (12) 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 the following sections:
 - i. 33 [Documents affecting national security, defence or international relations]
 - ii. 47E [Public interest conditional exemptions—certain operations of agencies]
 - iii. 47F [Public interest conditional exemptions—personal privacy]
 - iv. 47G [Public interest conditional exemptions—business]
 - c. Refuse access to two (2) documents on the grounds that the document is considered exempt under sections:
 - i. 33 [Documents affecting national security, defence or international relations]
 - ii. 47E [Public interest conditional exemption—certain operations of agencies]
 - d. Remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

9. In making my decision, I have had regard to:
 - a. the scope of the request
 - b. the content of the identified documents in issue
 - c. relevant provisions of the FOI Act
 - d. Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

REASONS FOR DECISION

Section 22 Access to edited copies with exempt or irrelevant matter deleted

10. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse access to an exempt document, or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access. The documents identified in the schedule of documents as being released in part contain exempt material that do not relate to the request.

11. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material, and release the documents to you in an edited form. Where a decision maker denies access to a document, section 22(1) of the FOI Act requires that they consider releasing the document with exempt matter deleted, if possible.

12. In the case of documents identified in the schedule of documents as being refused in full, I have decided to refuse access to the documents as they would be of little or no value. Paragraph 3.98 of the Guidelines provides that:

...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.

Section 33 Documents affecting national security, defence or international relations

13. Section 33(a) of the FOI Act states:

A document is an exempt document if disclosure of the document under this Act:

- (a) *would, or could reasonably be expected to, cause damage to:*
 - (i) *the security of the Commonwealth*
 - ...
 - (ii) *the international relations of the Commonwealth.*

14. In regard to the terms ‘would, or could reasonably be expected to’ and ‘damage’, the Guidelines provide:

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

...

5.32 The meaning of ‘damage’ has three aspects:

- i. that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*

- ii. *the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. *the organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

15. The Guidelines further provide:

5.30 *The term 'security of the Commonwealth' broadly refers to:*

- (a) *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests*
- (b) *the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations (see definition in s 4(5)).*

...

5.39 *The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.*

16. I found the documents contain information that would expose security protocols and harm Defence's effectiveness to perform required security functions for visiting dignitaries. The information could be used by adversaries to infiltrate and hinder future visits by dignitaries, thereby prejudicing the Commonwealth's ability to provide safety and protection from danger. Given the sensitive nature of the information, disclosure would cause, or could reasonably be expected to cause, damage to the security of the Commonwealth.

17. Additionally, disclosure would, or could, reasonably be expected to cause damage to the international relations of the Commonwealth. The nature of the information contained within the documents if released could reasonably and adversely impede the good working relations between Defence and other government entities due to the flow of confidential information. Accordingly, I am satisfied the information is exempt under section 33(a) of the FOI Act.

18. I have also taken into account and placed weight on the intelligence technique known as the 'mosaic theory' when making my assessment of the damage that would, or could reasonably be expected to occur on disclosure of the material identified. I note there is information in the public domain that, when matched with information from other sources and the identified documents, whether that information is in the public domain in an official or other capacity, could allow adversaries to piece together information that would undermine Defence's capability and effectiveness, causing damage to the security, defence or international relations of the Commonwealth. The Guidelines provide that:

5.43 *When evaluating the potential harmful effects of disclosing documents that affect Australia's national security, defence or international relations, decision makers may take into account not only the contents of the document but also the intelligence technique known as the 'mosaic theory'. This theory holds that individually harmless pieces of information,*

when combined with other pieces of information, can generate a composite—a mosaic—that can damage Australia’s national security, defence or international relations. Therefore, decision makers may need to consider other sources of information when considering this exemption.

19. I have identified that disclosure of the documents would, or could reasonably be expected to, cause damage to the security of the Commonwealth by disclosing information about the ability, availability or operational status of strategic Defence capabilities. I consider that the exempt material contains sensitive information that could potentially allow those with hostile intentions to identify and exploit the Australian Defence Force, and which would prejudice, or hinder its effectiveness.

20. Further, Defence’s primary role is to secure and defend Australia and its national interests, promote security and stability, and support the Australian community as directed by the Government. I consider releasing documentation containing operational methods and administrative procedures about flypasts, could cause damage to Australia’s military capabilities, allowing those with hostile intentions to exploit the Australian Defence Force and in turn, prejudice, or hinder its effectiveness.

21. Accordingly, I am satisfied that the information is exempt under sections 33(a)(i) and 33 (a)(iii) of the FOI Act.

Section 47E Public interest conditional exemptions—certain operations of agencies

22. Section 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, do any of the following:

....

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

23. The Guidelines, at paragraph 6.115, provide that:

The predicted effect must bear on the agency’s ‘proper and efficient’ operations, that is, the agency is undertaking its operations in an expected manner.

24. In the case of ‘ABK’ and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner (IC) found that where the direct email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to reasonable expectation that the release of direct contact details would undermine the operation of established channels of communication with the public. Further, the IC accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.

25. I am satisfied that were the contact details of Defence personnel made publicly available, it would have substantial adverse effects on the proper and efficient operation of extant public communication channels. Further, I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of Defence personnel. Disclosure of names, email addresses and phone numbers could therefore, reasonably be expected to prejudice the operations of Defence.

26. Additionally, I have identified material about the implementation of a core workplace health and safety function in Defence. To effectively and efficiently conduct operations, Defence must remain agile, adaptable and consider a variety of methods by which to achieve its goals. I am satisfied that disclosure of the identified material would, or could reasonably be expected to, have a substantial adverse impact on Defence's proper and efficient conduct, being to consider and deliberate on options available to ensure the safety of all involved in operational activities.

27. Paragraph 6.112 of the Guidelines require that I consider whether disclosure of the information 'would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient.' The direct contact details in the documents are not public and more appropriate communication channels already exist. Further, disclosure of this information would, or could, reasonably damage the conduct of Defence operations by providing opportunities for adversaries and other nations' agencies to obtain specific details of Defence capabilities and operations.

28. I am satisfied that release of the information would not lead to any efficiencies. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F Public interest conditional exemptions—personal privacy

29. Section 47F(1) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

30. The FOI Act shares the same definition of 'personal information' as the *Privacy Act 1988* (Cth). The Guidelines provide that:

6.123 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not

(b) whether the information or opinion is recorded in a material form or not.

31. I found that the documents contain personal information. This includes names and contact details which would reasonably identify an individual. In my assessment of whether the disclosure of personal information is unreasonable, I considered the following factors in accordance with section 47F(2):

- 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.

32. I found that the specific personal information listed is not well known, and individuals whose personal information is contained in the documents are not widely known

to be associated with the matters dealt within the document. Further, this information is not readily available from publicly accessible sources.

33. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Section 47G Public interest conditional exemptions—business

34. Section 47G(1)(a) of the FOI Act states:

(1) A document is conditionally exempt if its disclosure under this 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, unreasonably affect that 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.

35. I note that the use of the word ‘could’ in this provision requires only reasonable consideration of the possibility that disclosure may cause the consequences specified. The Guidelines provide that:

6.181 The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. Nevertheless, the information in question must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking (s 47G(1)(a))

...

6.185 The test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. These considerations require a weighing of a public interest against a private interest - preserving the profitability of a business. However, at this stage it bears only on the threshold question of whether the disclosure would be unreasonable

...

6.191, ‘[t]he term ‘business affairs’ has been interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs’.

36. I identified limited material in the documents containing business information belonging to an organisation which Defence had reason to liaise with. The documents contain sensitive information about the business affairs of third parties. Disclosure of this information would, or could reasonably be expected to, unreasonably affect the third party’s business affairs by providing a competitive advantage to competitors.

37. Accordingly, I am satisfied that the information is conditionally exempt under section 47G(1)(a) of the FOI Act.

Public interest considerations—sections 47E, 47F and 47G

38. Section 11A(5) of the FOI Act states:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

39. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

- (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.*

40. In my view, 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). Paragraph 6.233 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:

- the operations of the ADF
- the protection of an individual's right to privacy
- the personnel management function of an agency
- the business interests of an individual or a group of individuals
- an agency's ability to obtain confidential information.

41. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. As established above, releasing the names, email addresses and phone numbers of Defence personnel can reasonably be expected to prejudice the management, and personnel management, functions of Defence. Extant communication channels and processes enable efficient and appropriate liaison with the public.

42. It is also in the public interest that the ADF is able to carry out its mission to defend Australia and its national interests. I have considered the planning activities of ADF operations and placed weight on publicly available material, including Australian Government consultation with the public in advance of the flyover. Therefore, the public interest against disclosure outweighs the public interest for release.

43. There is strong public interest in not releasing information that would unreasonably affect a business. Given Defence's strong links with industry, it is imperative that Defence be able collect and retain sensitive commercial information without fear that the material would

be released without authorisation. It is reasonable to expect that the release of the information contained in the documents would have an adverse effect on the business affairs of the relevant organisation.

44. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision. I am therefore satisfied, based on the above, that the public interest factors against outweigh the factors for disclosure. On balance, it is against the public interest to release this information, and I find that it is exempt under sections 47E, 47F and 47G of the FOI Act.

FURTHER INFORMATION

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

46. Document 3 (page 7) references the AIP SUP 141. 141 was superseded by AIP SUP 151. This document was authorised by Airservices Australia and is publically available at <https://www.airservicesaustralia.com/aip/current/sup/s24-h155.pdf>.

