



DEFENCE FOI 569/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 22 January 2025 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

... [“... all incident and briefings prepared and presented to defence minister Richard Marles about military interactions or incidents with China between January 1 2024 and present.”]

Background



FOI decision maker

4. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

5. I have identified two documents as falling within the scope of the request.

Exclusions

6. 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

7. I have decided to:
 - a. partially release one document 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 33 [Documents affecting national security, defence or international relations], 47E [Public interest conditional exemptions--certain operations of agencies] and 47F [Public interest conditional exemptions--personal privacy] of the FOI Act;
 - b. refuse access to one document on the grounds that the document is considered exempt under section sections 33 [Documents affecting national security,

defence or international relations], 47E [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 in accordance with section 22 of the FOI Act.

Material taken into account

- 8. In making my decision, I have had regard to:
 - a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions of the FOI Act;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
 - e. consultation with relevant officers of the Department of Defence within Vice Chief of the Defence Force (VCDF) Group and Strategy, Policy and Industry (SP&I) Group; and
 - f. consultation with relevant officers within the Department of Foreign Affairs and Trade (DFAT).

REASONS FOR DECISION

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

- 9. 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.
- 10. 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.
- 11. 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. 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.
- 13. In the case of document two, I have decided to refuse access to the document as it would be meaningless and of little or no value once the exempt material is removed.
- 14. Where whole pages are considered to be exempt in full or irrelevant to the scope of the request, these pages have been removed from the released document pack.

Section 33(a) – Documents affecting national security, defence or international relations

15. 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

...

(iii) the international relations of the Commonwealth.

16. 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.

...

5.25 ‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government...

17. In regard to ‘security of the Commonwealth’, the Guidelines, at paragraph 5.30, broadly refers to:

the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests.

18. The term ‘damage’ in regard to the security of the Commonwealth is described in the Guidelines at paragraph 5.32 to have 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.

19. In regard to 'security of the Commonwealth', the Guidelines provide at paragraph 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)).*



23. I have also placed weight on the purpose of the documents [redacted] in making my assessment. In this regard, I have considered the Guidelines at paragraph 5.34 where it states:

It is well accepted that securing classified government information forms part of the security of the Commonwealth.



27. In regard to ‘international relations’, the Guidelines provide at paragraph 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.

28. I find that disclosure of the material exempted under section 33(a)(iii) of the FOI Act would cause, or could reasonably be expected to cause, damage to the international relations of the Commonwealth. The documents contain details of Australia’s relationships with other countries that should be treated sensitively in order to ensure trust and confidence in the Australian government by its international partners.
29. 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

30. 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.*

31. 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.

32. 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.
33. 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 existing 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 direct contact details could, therefore, reasonably be expected to prejudice the operations of Defence.

34. [REDACTED]
- [REDACTED] I considered the proper and efficient conduct of the agency to which the information pertains, and how disclosure would, or could reasonably be expected to, have a substantial adverse impact on the proper and efficient conduct of the agency.
35. I consider there is a public interest in not disclosing the internal considerations in the documents that took place in the course [REDACTED]
- [REDACTED]
36. The Guidelines provide, at paragraph 6.112, that I should 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.’ Given that the direct contact details within the documents are not publicly available, that more appropriate communication channels are already available, and that the documents contain information about Defence internal processes, I am satisfied that release of the information could reasonably be expected to lead to a change in Defence’s processes that would not lead to any efficiencies.
37. 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

38. 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).*
39. The FOI Act shares the same definition of ‘personal information’ as the *Privacy Act 1988* (Cth). The Guidelines provide that:
- 6.128 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:*
- (i) whether the information or opinion is true or not; and*
 - (ii) whether the information or opinion is recorded in a material form or not.*
40. I found that the documents contain personal information of individuals.

41. 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; and
 - d. the effect the release of the personal information could reasonably have on the third party.
42. I found that the specific personal information listed is not well known, individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the document and the information is not readily available from publicly accessible sources.
43. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E and 47F

44. 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.

45. 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.*
46. 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).
47. 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:
- a. the protection of an individual's right to privacy;
 - b. the interests of an individual or a group of individuals; and
 - c. the management and personnel management function of an agency.

48. While I accept there is a public interest in ensuring the Defence undertakes its functions in a transparent and proper manner, there is also strong public interest in maintaining the confidentiality of the material contained within the document.
49. Defence has an obligation to protect the personal information of third parties that it holds, and I find that the public interest in protecting this information outweighs the public interest in releasing this information. Further, I consider that disclosure would constitute an unwarranted and unnecessary intrusion into, and breach of, the personal privacy of the individuals concerned – without any legitimate countervailing benefits flowing to anyone, noting the personal information does not relate to the applicant.
50. Defence has obligation to ensure the proper and efficient conduct of the operations of an agency, and I find that the public interest in not disclosing the internal considerations staff use when preparing advice outweighs the public interest in releasing this information. I found disclosure of the information would, or could reasonably be expected to, have a substantial adverse effect upon an agency without any legitimate benefits.
51. 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.
52. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under sections 47E and 47F of the FOI Act.

FURTHER INFORMATION

53. The document contained a dissemination limiting marker (DLM). Where the document has been approved for public release, the DLM has been struck through.



Accredited Decision Maker
Vice Chief of the Defence Force Group
Department of Defence

13 March 2025