



FOI Reference: FOI 702/22/23

OAIC Reference: MR23/00817

FOI 702/22/23 STATEMENT OF REASONS UNDER SECTION 55G OF THE FREEDOM OF INFORMATION ACT

1. I refer to the request by Senator David Shoebridge (the applicant), dated and received on 3 May 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“I’m writing to request the Department of Defence’s biannual reports about the use of its RAAF “special purpose” flights.

The government has previously published these reports publicly, however it has not published updated details of these flights since August 2021. The last disclosed flights were for those taken in July and December 2020.

I understand Defence has been reviewing the guidelines around the publication of the reports due to security concerns, in consultation with the Australian federal police and the Department of Finance. Therefore I also request any documents related to this review, including any reports or findings coming out of the review, including preliminary reports or findings if the review is not yet finalised.”

Background

2. On 1 June 2023, with the applicant’s written agreement, Defence extended the period for dealing with the request from 2 June 2023 until 16 June 2023 in accordance with section 15AA [extension of time with agreement] of the FOI Act.

3. On 9 June 2023, with the applicant’s written agreement, Defence extended the period for dealing with the request from 16 June 2023 until 2 July 2023 in accordance with section 15AA [extension of time with agreement] of the FOI Act.

4. On 3 July 2023, Defence applied to the Office of the Information Commissioner (OAIC) for an extension of time to deal with the request. On 10 July 2023, the delegate of the Information Commissioner advised of the decision to decline to extend the period for Defence to deal with the request under section 15AB [extension of time for complex or voluminous requests] of the FOI Act.

5. On 4 August 2023, the OAIC issued a direction to make a revised decision under section 55G [revocation or variation of access refusal decision] of the FOI Act by 25 August 2023.

FOI decision maker

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

Documents subject to the section 55G decision

7. I identified 16 documents as falling within the scope of the request.
8. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

9. Mobile telephone numbers contained in documents that fall within the scope of the FOI request and duplicates of documents are excluded from this request. Defence has only considered final versions of documents.

Revised Decision

10. I have decided to vary the original decision by:
- a. releasing 11 documents in full;
 - b. partially releasing five (5) 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 47E(d) [Public interest conditional exemptions – certain operations of agencies] and 47F [Public interest conditional exemptions – personal privacy] of the FOI Act; and
 - c. removing irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

11. In making my decision, I had regard to:
- a. the terms of the request;
 - b. the content of the identified document 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 the Office of the Deputy Prime Minister, the Australian Federal Police (AFP) and Department of Finance; and
 - f. advice received from Subject Matter Experts from the Royal Australian Air Force (RAAF).

REASONS FOR DECISION**Section 22 – Access to edited copies with exempt or irrelevant matter deleted**

12. 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.

13. Certain documents contain material and information including mobile telephone numbers that is outside the scope of, and does not relate to, the request.
14. For the reasons outlined below, I have also found that the documents contain exempt material.
15. 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.

Section 47E(d) – Public interest conditional exemptions – certain operations of agencies

16. 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:

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

17. The Guidelines, at paragraph 6.123, provide that:

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

18. 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.
19. Defence has designated channels and points of contact for receiving and dealing with public communications according to their subject and nature. I am satisfied that were the direct 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, including the ability to manage and respond to communications in an effective manner. 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.
20. Accordingly, I am satisfied that the material contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

21. 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).

22. For the purposes of the FOI Act, 'personal information' is defined as having the same meaning 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:*

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

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

23. I found that the documents contain personal information of third party individuals. This includes their names and positions held within their respective agencies, which would reasonably identify the relevant third parties.
24. 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.
25. 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. Having regard to the nature and context of the information, I also consider disclosure in the absence of consent is also likely to cause significant concern to the relevant individuals.
26. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E(d) and 47F

27. 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.*
28. 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.*
29. 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).

30. 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:
- the protection of an individual's right to privacy;
 - the interests of an individual or a group of individuals; and
 - the management function of an agency.
31. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. As I have established above at section 47E(d), the release of the names, email addresses and phone numbers of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of Defence personnel should, therefore, not be disclosed, as this would compromise the ability of Defence to manage and respond to public communications in a coordinated and efficient manner. It may also result in Defence personnel being subject to inappropriate direct contact in a manner, which adversely impacts on Defence's ability to protect its personnel from risks to their health and wellbeing.
32. Furthermore, I find disclosure of the conditionally exempt section 47F information would reveal sensitive considerations associated with Defence activities including the personal privacy of those employees. 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 by other agencies as part of these processes.
33. 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.
34. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors favouring disclosure, and that, on balance, it is contrary the public interest to release the information to you. Accordingly, I find that the information is exempt under sections 47E(d) and 47F of the FOI Act.

FURTHER INFORMATION

35. 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.

Steven Williams

Position number 00635480

Associate Secretary Group