



Reference: Objective ID: **R31246392**

FOI 020/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the email of 15 August 2017, in which Mr Alan Cole sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act) of the Accredited Decision Maker's decision dated 28 July 2017.

2. The applicant's request was for access to the following documents under the FOI Act:

"Request the schedule and flight manifests including crews of all special purpose flights outside of Australia i.e international flights between January and July of 2017.

Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request."

Contentions

3. In his application, the applicant requested an internal review of the decision, specifically he has requested the names of the flight crews.

4. The purpose of this letter is to provide a fresh decision to the applicant on the basis that he believes further documents exist.

Reviewing officer

5. I am authorised to make this internal review decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

Documents subject to review

6. Upon review, fresh searches were conducted by the Royal Australian Air Force (RAAF). 37 manifests were identified as matching the scope of the request.

7. Certain information taken from the manifests is provided to Parliament for tabling, which is described as the "Schedule of Special Purpose Flights".

8. Noting the outcome of fresh searches, 37 documents are subject to internal review. These documents are listed in an "FOI schedule of documents" at Enclosure 1. My internal review decision is highlighted in blue.

Internal review decision

9. I have carefully considered the content of the documents. I have decided to uphold the original decision to defer access to the “Schedule of Purpose Flights” under section 21(1)(c) [Deferment of access] of FOI Act.

10. I have decided to deny access to the remaining information in the manifests under section 33(a)(i) [Documents affecting the security of the commonwealth] and section 47F [Personal privacy] of the FOI Act.

11. Further to the above, material such as mobile telephone numbers which is considered irrelevant was removed under paragraph 22(1)(b)(ii) [irrelevant matter deleted] of the FOI Act.

Material taken into account

12. In arriving at my decision, I had regard to:

- a. the scope of the applicant’s request and subsequent internal review application;
- b. the original decision;
- c. the content of the documents subject to the internal review;
- d. relevant provisions in the FOI Act;
- e. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
- f. the outcome of fresh searches conducted by Royal Australian Air Force (RAAF);
- g. consultation with the RAAF; and
- h. the *Guidelines for the Use of Special Purpose Aircraft* from the Department of Finance (SPA Guidelines).

Section 21(1)(c)

13. Section 21(1)(c) of the FOI Act states;

(1)An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:

(c) if the premature release of the document concerned would be contrary to the public interest - until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest...

14. In making my decision, I had regard to the Guidelines, specifically 3.92 which notes, ‘The agency or minister must inform the applicant of the reasons for deferring access and, as far as practicable, indicate how long the deferment period will be...’.

15. Upon examination of the documents, I found personal information of third parties that if released would require consultation under section 27A [Consultation – documents affecting personal privacy] of the FOI Act. If this course of action were taken, it is likely that exemptions would apply to the documents in accordance with section 47F [Public interest conditional exemptions – personal information].

16. If the third parties objected to the release of information, they would have review rights over this material. Conducting consultations would delay the provision of the documents, particularly if the third parties exercised their review rights, and may result in heavy redactions.

17. I have also considered that preparation of the *Schedule of Special Purpose Flights* for tabling in Parliament involves review and cross-checking of the information in the manifests.

18. I note that Defence tables the *Schedule of Special Purpose Flights* in accordance with the schedule mandated in the SPA Guidelines. This process is designed to ensure that Defence is publicly accountable and transparent. Therefore, deferring the release of the documents will allow Defence to release a copy of the documents, with minimal information removed, to the applicant in early 2018 once the information is made public.

19. While I acknowledge there may be some public interest in releasing the documents at this time, on balance I considered the premature release of the documents would be contrary to the public interest, as there is a greater interest in upholding the Parliamentary tabling process.

20. Taking the above into account, I have decided to defer the release of the documents in accordance with section 21(1)(c) of the FOI Act, thus allowing the applicant to receive the documents in early 2018.

Section 33(a)(i) – damage to the security of the Commonwealth

21. I consider that the release of some material is considered exempt under section 33(a)(i) of the FOI Act as it could reasonably be expected to cause damage to the security of the Commonwealth.

22. In order for the exemption to apply, it must be shown that disclosure ‘would, or could reasonably be expected to’ cause damage.

23. The Guidelines provide that the term ‘reasonably expected’ in the context of section 33(a)(i) requires consideration of the likelihood of the predicted or forecast damage. In particular, at 5.27 the Guidelines indicate that there must be ‘real’ and ‘substantial’ grounds for expecting the damage to occur which can be supported by evidence or reasoning. A mere allegation or a mere possibility of damage will be insufficient for the purposes of the exemption.

24. ‘Damage’ is not confined to loss or damage in monetary terms and the relevant damage may be of an intangible nature.

25. The material that I have decided to exempt relates to the names of the co-pilots, flight crew and other flight information on special purpose flights. I have formed the view that release of this material identified in the manifests could reasonably be expected to cause damage to the security of the Commonwealth.

26. Defence employs a strategy of security-in-depth to protect its people, information, assets and infrastructure from sources of harm that could weaken, compromise or destroy them. Due to the nature of their roles in supporting VIP operations and Australia's current security posture, members of the SPA flights are at increased risk and therefore it is appropriate that we take measures to protect this information.

27. It is reasonable to expect that if the material were released, it could be used by persons to attempt to compromise the safety and operation of the aircraft, passengers and crew on-board. I am satisfied that compromising the security of the flight crew could in turn increase the risk that the crew would be subject to coercion, intimidation and bribery, which, in effect, could cause damage to the security of the Commonwealth.

28. Accordingly, I have decided to exempt the material described at paragraph 25 above under section 33(a)(i) of the FOI Act.

Section 47F

29. Subsection 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. Upon review, I identified information such as passport numbers and other identifying information belonging to persons other than the applicant.

31. The Guidelines note that '*the personal privacy exemption is designed to prevent the 'unreasonable' invasion of third parties' privacy*'.

32. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to:

- 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 documents;
- c. the availability of the information from publicly accessible sources; and
- d. any other matters that the agency considers relevant.

33. Against those criteria, I found that:

- a. the specific personal information is not well known to the broader community;
- b. the specific personal information is not readily available from publicly accessible sources; and
- c. the specific information is information which third parties would object to the release of without their consent.

34. Section 11A(5) [Access to documents on request – Exemptions and conditional exemptions] 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.

Public interest considerations under section 47F

35. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines, together with a range of factors that favour access to a document set out in subsection 11B(3) [Public interest exemptions – Factors favouring access] of the FOI Act.

36. Disclosure of the specific personal information would promote some of the objects of the FOI Act as information held by the Government is a national resource. However, disclosure of the specific personal information would not increase scrutiny or discussion of government activities.

37. While release of the specific information may be of some interest to the applicant, there is a strong public interest in protecting the privacy of individuals whose personal details appear in the documents. Further, it would not, in my view, increase public participation in government processes nor would it inform public debate on any matter of public importance in any meaningful way.

38. Additionally, disclosure of the specific information would not promote oversight of public expenditure.

39. In coming to the above decision, I also considered subsection 11B(4) [Public interest exemptions – Irrelevant factors] of the FOI Act. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents. I therefore decided that it would be contrary to the public interest to release the specific information considered exempt, under subsection 47F(1) of the FOI Act.

Further Information

Crew details

40. I note that previous Defence decisions has disclosed crew details. However, as the security needs of Defence has changed, this information is no longer releasable.

Manifests

41. The RAAF has confirmed that although a manifest normally includes a list of cargo on flights, no cargo is carried on special purpose flights.

Release of documents

42. Once the Schedule of Special Purpose Flights has been released publicly in early 2018, the documents minus the exempt material will be disclosed to the applicant.

Ms Joanne Anderson
Accredited Decision Maker – Internal Review