



**Australian Government**  
**Department of Defence**

Reference: BO1039518

**FOI 169/18/19 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by Mr. Joshua Morrison under the *Freedom of Information Act 1982* (FOI Act), for access to:

*“The attached media release from the Minister for Veterans’ Affairs, Minister for Defence Personnel and Minister Assisting the Prime Minister for the Centenary of ANZAC where it states, “Following an agreement signed by the Chief of Air Force, Air Marshal Leo Davies, and Young Diggers’ Dog Squad (YDDS) Chairman of Directors on 10 August 2018, YDDS will train and provide three rescued dogs and their associated equipment to Air Force.”*

*This request is for the documents mentioned by the minister and referred to in paragraph 2 of this email.”*

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

**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 one document, totalling 28 pages, as matching the description of the request.

**Decision**

4. 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 47B(a) [public interest conditional exemptions-Commonwealth-State relations], 47D [public interest conditional exemptions-financial or property interests of the Commonwealth], 47F [public interest conditional exemptions-personal privacy] and 47G [public interest conditional exemption-business] of the FOI Act; and
- b. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

### **Material taken into account**

5. 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); and
  - e. advice received from third parties.

### **Reasons for decision**

#### **Section 47B – Commonwealth-State relations**

6. Upon examination, I found that the documents contained information which relates to Commonwealth-State relations. Release of this information would impact the ability of Commonwealth and State entities to cooperate on future endeavours that benefit either entity.
7. Taking the above into account, I consider the material to be conditionally exempt under section 47B(a) of the FOI Act as release would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

#### **Section 47D – Financial or property interests of the Commonwealth**

8. Upon examination, I found that the documents contained information which relates to sensitive financial considerations. Release of this information would reveal costs borne by Defence as part of a Memorandum of Understanding (MOU) with another organisation that may result in the Commonwealth not being able to achieve the best value for money in future contracts.
9. Taking the above into account, I consider the material to be conditionally exempt under section 47D of the FOI Act as release would cause a substantial adverse effect on the financial interests of the Commonwealth.

#### **Section 47F – Personal privacy**

10. Upon examination of the documents, I identified information, specifically names and personal information of third parties other than the applicant.
11. In making my decision, I considered whether:
  - a. the document contained personal information;
  - b. the disclosure of the personal information would be unreasonable; and
  - c. the disclosure of this information would, at this time, be contrary to public interest.
12. As a person's identity is apparent or reasonably ascertainable from the identified information, I have decided that it constitutes personal information.
13. In determining whether release of the above personal information is unreasonable, I took into account, inter alia:

- 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 within the document; and
  - c. the availability of the information from publicly accessible sources.
14. Against these criteria, I found:
- a. the specific identified information is not well known;
  - b. the persons to whom the information relates is not widely known to be (or to have been) associated with the matters dealt with in the documents; and
  - c. the specific identified information is not available from publicly accessible sources.
15. With reference to the assessment above, I consider the release of personal identifying information would be an unreasonable disclosure of personal information and therefore conditionally exempt under section 47F(1) of the FOI Act.
16. Section 11A(5) of the FOI Act allows access to conditionally exempt documents unless, in the circumstances, access to the document would be contrary to the public interest.

#### **Section 47G – Business information**

17. Upon examination of the documents, I identified business information of third parties. Under section 47G of the FOI Act, a document is conditionally exempt if it discloses 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.*

18. I note that the use of the word ‘could’ in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.
19. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that the effect of disclosing the identified material could have an adverse effect on the companies as disclosure of their information, without their consent could diminish the competitive nature of their business and/or their business operations.
20. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G of the FOI Act.

#### **Public interest considerations - sections 47B, 47D, 47F and 47G**

21. Section 11A(5) of the FOI Act requires an agency to allow access to a conditionally exempt document unless, in the circumstances, access to the document at the time would, on balance, be contrary to the public interest.

22. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of relevant factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. While disclosure may promote some of the objects of the FOI Act, information held by the Government is a national resource and release of the personal information would promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act. I do not consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities. I also consider there is a strong public interest in not releasing information that would unreasonably affect a business.

23. 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 disclosure of the documents could reasonably be expected to prejudice:

- a. the protection of an individual's right to privacy;
- b. an agency's ability to obtain similar information in the future;
- c. the competitive commercial activities of an agency; and
- d. harm the interests of an individual or group of individuals.

24. The release of the identified business information is likely to harm the commercial interests of the identified third parties. If Defence were to release this type of information it would lessen confidence in Defence's ability to protect information and restrict the future flow of such information. If the information was made public it could reasonably cause an adverse effect on Defence's ability to conduct and manage working relationships with contractors in the future. Finally, I do not believe that the removal of the identified business information significantly detracts from the value of the document/s being sought by the applicant.

25. Disclosure of some of the material contained in the documents would potentially have a significant impact of the Commonwealth's ability to effectively manage its financial and property interest. While I considered that disclosure may increase scrutiny or discussion of Defence activities, I found that the public interest in protecting the financial interest of the Commonwealth would far outweigh the public interest in premature release of the identified material.

26. Furthermore, I consider that the potential prejudice to the privacy of third parties outweighs any of the factors for disclosure of the identified personal information. I consider that 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.

27. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document and deem the information exempt under sections 47B(a), 47D, 47F(1) and 47G(1) of the FOI Act.

28. None of the factors in section 11B(4) [irrelevant factors] were taken into consideration when making my decision.

**PR Davies, CSC**

Group Captain

Accredited Decision Maker

Air Force

December 2018