



Australian Government
Department of Defence

Objective Reference: BN23727309

FOI 204/20/21 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

“... “1. The AGSVA “vetting decision risk model” referred to in paragraph 2.13 of the ANAO’s 2018 report on Mitigating Insider Threats through Personnel Security.

2. The “structured professional judgement instrument” referred to in the same paragraph.” ...”

Personal email addresses, signatures, PMKeyS numbers 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.

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 two documents 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 section 33(a)(i) [Documents affecting national security] and section 47E(d) [public interest conditional exemptions-certain operations of agencies] of the FOI Act;
- b. refuse access to one document under section 7(2A) [Certain persons or bodies] of the FOI Act; and
- c. 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; and
- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reasons for decision

Section 7(2A) – Certain persons and bodies

6. Subsection 7(2A)(b) of the FOI Act provides that information from an intelligence agency is exempt from the operation of the Act in relation to particular types of documents.

7. Subsection 7(2C)(a)(i) of the FOI Act provides that a document that has originated with, or has been received from, the Department of Defence and that is in respect of: (i) the collection, reporting or analysis of operational intelligence or is exempt from the operation of the Act.

8. In accordance with FOI Guidelines 2.18 the Exemption also extends to a part of a document that contains an extract from or a summary of an intelligence document.

2.18 All Australian Government agencies are exempt from the operation of the Act in relation to ‘intelligence agency documents’ and ‘defence intelligence documents’ (for example, a document that originated with or was received from the Department of Defence and relates to the collection, reporting or analysis of operational intelligence s 7(2C)... The exemption extends to a part of a document that contains an extract from or a summary of an intelligence agency document or a defence intelligence document. The remainder of the document is not exempt on the same basis, and access may have to be given after deletion of the exempt material under s 22.

9. I am satisfied that the document exempted under section 7 of the FOI Act is a defence intelligence document.

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

10. Section 33(a)(i) of the FOI Act provides that a document is exempt from release if its disclosure could reasonably be expected to cause damage to the security of the Commonwealth. For this exemption to be claimed I must be satisfied that there is a ‘real’ and ‘substantial’ risk of damage occurring. It is insufficient that there merely be a possibility of such damage.

11. In regards to the terms ‘could reasonably be expected to’ and ‘damage’ paragraphs 5.16, 5.17 and 5.28 of the Guidelines provide that:

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, be presently occurring, or could occur in the future.

5.28 ‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible...but [should be] determined on the facts of each particular case.

12. Having reviewed the information in light of the Guidelines, I am satisfied of the real and substantial risk to national security the release of the exempt information would pose. The security clearance assessment process is central to the Australian Government’s ability to secure classified information and safeguard against misuse and unauthorised disclosure.

Disclosure of the information would undermine the effectiveness of the security vetting process and could increase the risk of misuse of sensitive information.

13. While some of the information may be considered harmless in isolation, when taken in conjunction with other documented information a mosaic is created that may reveal damaging information about the Commonwealth's security clearance processes.

14. In relation to the mosaic effect, paragraph 5.39 of the Guidelines state that:

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, can generate a composite – mosaic – that can damage Australia's national security, defence or international relations.

15. If the Commonwealth's security clearance processes are revealed, the integrity and efficacy of these processes may be compromised, providing scope for clearance applicants to tailor information to the known rigors of the vetting process. This may provide an inaccurate picture of individual applicants, who may then be assessed as suitable to access nationally classified information. This could increase the risk to the Commonwealth of unsuitable persons gaining access to classified or sensitive government information or resources.

16. Considering the above, I am satisfied that the identified material is exempt under section 33(a)(i) of the FOI Act as release could have an adverse effect on the security of the Commonwealth.

Section 47E – Certain operations of agencies

17. 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 substantial adverse effect on the proper and efficient conduct of the operations of an agency.

18. Upon examination of the documents I identified information for which a claim under section 47E(d) of the FOI Act is warranted. I considered that the material could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Defence.

19. I note that use of the word 'could' in this provision also requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.

20. Having reviewed the information, with respect to the guidelines, I am satisfied that the release of the information could have an adverse effect on the effectiveness of the assessments Defence uses to determine a clearance subject's suitability to access classified resources.

21. Defence relies on frank and honest answers from applicants related to the security clearance process. Material, which if publicly released, could provide an understanding of the factors assessed, sources used, and information considered by Defence to be of significance, may allow clearance subjects to provide artificial answers to demonstrate superficial behaviours. This may provide an inaccurate picture concerning individual applicants, who may then be assessed as suitable to access classified or sensitive resources, with a resultant increase risk to the Commonwealth.

22. Further, identification of database fields and formats, even empty fields, would provide information on Defence's approach to protective security assessment that would reduce the effectiveness of mitigations.

23. I am satisfied that the expected effect of disclosing to the applicant material identified exempt under section 47E(d) could adversely affect the proper and efficient conduct of the operations of Defence. I have decided that the specified material identified in the document is conditionally exempt pursuant to subsection 47E(d) of the FOI Act. My public interest considerations are set out below.

Public interest considerations – Section 47E

24. I have found that the identified document is conditionally exempt under section 47E(d) of the FOI Act. Section 11A (5) provides that, if a document is conditionally exempt, it must be disclosed 'unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest'.

25. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, 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).

26. 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:

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

27. The security clearance process is an intrusive process designed to determine an individual's suitability to access classified material. Failure to maintain the integrity of this process would have serious adverse effects on national security. For this reason it is imperative that information which may compromise the security clearance process is not released to the public. Any information that will reveal the specific information gathered by AGSVA about an individual for vetting purposes will therefore be withheld. Information about certain operations of Defence, if released, could affect the integrity and efficacy of the Department of Defence's internal processes and procedures regarding security investigations.

28. While the applicant may be interested in the information withheld it would not inform public debate on any matter of public performance in any meaningful way. The deleted material would not allow the applicant any further access to their own personal information.

29. Accordingly, I considered that the public interest factors against disclosure outweigh the factors for disclosure of the identified material. Therefore I decided it would be contrary to the public interest to release the specific information and consider it exempt under sections 47E(d) and 47F of the FOI Act.

30. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

Further Information

31. 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
Accredited Decision Maker
Associate Secretary Group