



DEFENCE FOI 051/21/22 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by Clear Pseudonym (Right to Know) under the *Freedom of Information Act 1982* (FOI Act) for access to:

1. *“I am seeking documents given to/used by vetting coordination officers that direct how they do their day-to-day work.*
2. *The title or front page of the documents could use works like “workbook” or “work instruction”. The contents of the documents should contain rules/instructions on how to handle different scenarios relating to the information given to them by clearance subjects. For example, the documents should have rules for when a country does not issue birth certificates, or what to do when a subject does not have a surname. These rules may also be in a knowledge management system (I’d be surprised if it wasn’t to be honest). Note that I am requesting documents for the coordination officers (these are people that ensure that information provided is accurate and complete), NOT the decision makers of clearances.*
3. *I am also seeking the policy/legal direction documents that would inform the work instruction documents above.*
4. *These documents may come from either the legal team within Defence; or may be given AGSVA from the Attorney General’s Department, I’m unsure. Please advise and I may cut the scope of my request. As these documents (policy and work instructions) only relate to mundane normal day-to-day operation of the Agency (no critical decisions are being made with the work instruction documents, they are purely clerical in nature), it should not fall foul of any s33 exemption.”*

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 three documents as matching the description of the request.
4. I have added an FOI reference number and Item number to each of the documents.

Decision

5. I have decided to:
 - a. partially release three 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 section 33(a)(i) [Documents affecting national security] of the FOI Act and section 47E(d) [public interest conditional exemptions-certain operations of agencies]; 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

- 6. 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 Defence Security and Vetting Service

Reasons for decision

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

7. 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.

8. 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... determined on the facts of each particular case.

9. 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.

10. 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.

11. 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 – a mosaic– that can damage Australia’s national security, defence or international relations.

12. 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.

13. 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

14. 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 agency...

15. 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.

16. 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.

17. 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 assessments, Defence uses to determine a clearance subject’s suitability to access classified resources.

18. 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 increased risk to the Commonwealth.

19. 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.

20. I am satisfied that the expected effect of disclosing to the applicant material identified exempt under sections 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 documents is conditionally exempt pursuant to sections 47E(d) of the FOI Act. My public interest considerations are set out below.

Section 47E - Public interest considerations

21. I have found that some of 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'.

22. 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) in a meaningful way.

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 release of this information could reasonably be expected to prejudice:

- h. an agency's ability to obtain confidential information; or
- i. an agency's ability to obtain similar information in the future.

24. 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 Defence 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 Defence's internal processes and procedures regarding security clearances.

25. 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) of the FOI Act.

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

Further Information

27. 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.

28. Australian Government Security Vetting Agency (AGSVA) conducts security clearance assessments in accordance with the Attorney-General's Department's Protective Security Policy Framework. This is publically available at www.protectivesecurity.gov.au

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Associate Secretary Group