



DEFENCE FOI 520/22/23

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by MBV (the applicant), dated and received on 22 February 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

... all emails, electronic messages or records of conversations between RAAF and the Prime Minister's Office or PM&C relating to the Prime Minister's travel to Alice Springs (which took place on 24 January 2023).

Further, I seek any internal RAAF communications relating to this tasking.

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 have identified ten (10) documents as falling within the scope of the request.

Decision

4. I have decided to refuse access to the documents on the grounds that the documents are considered exempt under section 33 [documents affecting national security, defence or international relations] of the FOI Act.

Material taken into account

5. In making my decision, I have had regard to:
- a. the terms of the request;
 - b. the content of the identified documents 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); and
 - e. consultation responses from the Department of the Prime Minister and Cabinet (PM&C).

Background

6. On 21 March 2023, with the applicant's written agreement, Defence extended the period for dealing with the request until 23 April 2023 in accordance with section 15AA [extension of time with agreement] of the FOI Act.

7. On 21 April 2023, Defence applied to the Office of the Australian Information Commissioner (OAIC) for an extension of time to process the request under section 15AB [extension of time for complex or voluminous requests] of the FOI Act. OAIC granted us this extension until 23 May 2023.

Reasons for Decision

Section 33(a)(i) – Documents affecting national security, defence or international relations

8. Section 33(a)(i) of the FOI Act states:

A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

(i) the security of the Commonwealth...

9. In regard to the terms ‘would, or could reasonably be expected to’ and ‘damage’, the Guidelines provide:

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

...

5.31 The meaning of ‘damage’ has three aspects:

- i. that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. the organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

10. In regard to ‘security of the Commonwealth’, the Guidelines provide at paragraph 5.29:

The term ‘security of the Commonwealth’ broadly refers to:

- (a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests*
- (b) the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth’s international relations (see definition in s 4(5)).*

11. I find that documents exempt under section 33(a)(i), if disclosed, would cause, or could reasonably be expected to cause, damage to the ‘security of the Commonwealth’. The documents identified contain sensitive information relating to the Prime Minister’s travel and detailed information related to an aircraft that is in operational service with the Australian Defence Force. The release of these documents could impinge on the current and future planning activities being undertaken by the Defence Force by revealing sensitive information that will impact on the strategic operating environment processes of Defence. In addition, if the information were to be released, it could provide for an ability to assess operational profiles that should otherwise be kept unknown, as the release of the information could reasonably be expected to cause damage to the security of Commonwealth by making public information relating to a Defence capability that is highly sensitive.

12. Further, The Guidelines for the Use of Special Purpose Aircraft, dated February 2013, are currently being reviewed by Defence, in consultation with the Department of Finance and the Australian Federal Police. The revised Guidelines will be presented for Government consideration to ensure they remain fit-for-purpose and to ensure that security considerations are balanced with the need to remain accountable and transparent in the use of a public asset.

13. Accordingly, I am satisfied that the documents are exempt under section 33(a)(i) of the FOI Act.

Carolyn Terry
Assistant Director FOI
Associate Secretary Group
Department of Defence