



**FOI 045/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

*“Given that the Defence (Inquiry) Regulations 1985 have been in place since the late 1980's, I would like to request a 'report' of all Defence Inquiry's from either:*

- a. by calendar year 2003 through to 30 June 2017 or*
- b. by financial year 2003 -2004 through to 2016-2017*

*To be included on that report:*

*i. Full formal name of the Inquiry*

*ii. Type of Inquiry*

- *General Courts of Inquiry*
- *Boards of Inquiry*
- *Combined Boards of Inquiry*
- *Chief of the Defence Force Commission of Inquiry*

*iii. Date requested*

*iv. Date Started*

*v. Dated Completed / Abandoned*

*vi. Appointing Authority and Branch of Service*

*vii. If referred for further investigation and to whom.*

*Excludes personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers contained in documents that fall within the scope of this request.”*

**FOI decision maker**

2. I am the accredited 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 partially matching the description of the request.

**Decision**

4. I have decided to:

- a. partially release two 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 47E [public interest conditional exemptions – certain operations of agencies] of the FOI Act; and

- b. refuse access to documents of the request under subparagraph 24A(1)(b)(ii)[Requests may be refused if documents cannot be found, do not exist or have not been received] 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 provided by the Office of the Inspector-General of the Australian Defence Force, Defence Legal, Navy, Army and Air Force.

### **Reasons for decision**

#### **Section 47E – public interest conditional exemptions – certain operations of agencies**

6. I found that parts of the identified document contain material in respect of which a claim for exemption under section 47E(d) of the FOI Act may be warranted. Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

7. Subsection 47E(d) of the FOI Act states:

*‘A document is conditionally exempt if its disclosure under this Act would, or could reasonable be expected to, do any of the following:...*

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.’*

8. Those parts of the identified document I consider to be conditionally exempt under subsection 47E(d) of the FOI Act contain specific details of people involved in Defence inquiries and the number of recommendations made by an inquiry and then implemented. Release of this information could reasonably be expected to adversely affect the proper and efficient conduct of Defence inquiries and their ongoing implementation.

9. Taking the above into account, I consider that the identified document contains information which is conditionally exempt under section 47E(d) of the FOI Act.

#### **Section 47E – Public interest considerations**

10. Section 11A(5) of the FOI Act requires Defence to allow access to conditionally exempt material unless access to the material would be contrary to the public interest.

11. 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 the material, as set out on section 11B(3) of the FOI Act.

12. While disclosure may promote some of the objects of the FOI Act, such as providing access to information, I do not consider it would increase public participation in government processes.

13. Paragraph 6.22 of the Guidelines outlines a non-exhaustive list of factors against disclosure. The factors which I find particularly relevant to this case are that release of the information could reasonably be expected to:

- a. impede the administration of justice generally, including procedural fairness;
- b. prejudice an agency's ability to obtain similar information in the future; and
- c. prejudice the management function of an agency.

14. Release of the information could also be used to undermine the inquiry process, which in turn, could affect the operations of Defence.

15. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

16. On balance, I have found that the public interest factors against disclosure outweigh the factors for disclosure. As such, it would be contrary to the public interest to release this information and have decided to exempt the material under section 47E of the FOI Act.

**Section 24A – Request may be refused if documents cannot be found, do not exist or have not been received**

17. Section 24A(1) of the FOI Act states:

- (1) *an agency or Minister may refuse a request for access to a document if:*
  - (a) *all reasonable steps have been taken to find the document; and*
  - (b) *the agency or Minister is satisfied that the document:*
    - (i) *is in the agency's or Minister's possession but cannot be found; or*
    - (ii) *does not exist.*

18. Since 2006 ADFAITS has been used as a central Defence database to capture all administrative inquiries. I understand that the earliest entry on ADFAITS is 2005.

19. ADFAITS captures basic information about Defence inquiries including name of the inquiry, type of inquiry, date of event, Inquiry Officer, point of contact, number of recommendations and number of recommendations implemented.

20. It does not capture information requested by the applicant including date requested, date started, date completed, Appointing Authority and whether the inquiry was referred for further investigation and to whom.

21. It is unclear whether all Defence inquiries are registered on ADFAITS.

22. Based on the above, I am satisfied that no documents exist that identify all Defence inquiries from 2003 and all the parameters requested by the applicant. I am satisfied that all reasonable steps have been taken to locate the requested documents.

23. I have therefore decided to refuse access to the documents requested under section 24A(1) of the FOI Act.

**Further Information**

24. I note that reports from several Boards of Inquiry and Courts of Inquiry have been approved for public release by the relevant releasing authority and are publically available at [www.defence.gov.au/Publications/COI](http://www.defence.gov.au/Publications/COI) and [www.defence.gov.au/sydneyii](http://www.defence.gov.au/sydneyii).

**melanie.beacroft**

Digitally signed by melanie.beacroft  
DN: c=AU, o=GOV, ou=DoD, ou=PKI,  
ou=Personnel, cn=melanie.beacroft  
Date: 2017.08.10 17:25:23 +10'00'

Dr Melanie Beacroft  
Accredited Decision Maker  
Associate Secretary Group