



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

AB29664063

**FOI 113/16/17 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:

*“Item 1: Summary report (including recommendations and options for moving forward) authored by LTCOL Allan Black relating to the case of retrospective reclassification.*

*Item 2: Correspondence from Prime Minister Kevin Rudd to CDF into the change of classification of service conditions from non-warlike service to warlike service for four Australian Army Officers who were involved in the Israeli/Lebanese War of July to August 2006.*

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

**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 one document matching the description of the request.

**Decision**

4. I have decided to:
- a. partially release one document in accordance with section 22(1)(a)(ii) of the FOI Act [access to edited copies with exempt or irrelevant matter deleted], on the grounds that the deleted material is exempt under section 33(a)(i) [documents affecting national security], section 47C [deliberative processes]; and/or section 47F [personal privacy] 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 received from Vice Chief of the Defence Force Group.

### **Reasons for decision**

#### **Section 33(a)(i) – National security**

6. Section 33(a)(i) of the FOI Act exempts documents if disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth. Paragraph 5.26 of the Guidelines describes damage to the security of the Commonwealth as broadly referring to the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests.

7. The document within the scope of this request contains information, which if released, could reasonably be expected to cause damage to the security of the Commonwealth. The document contains details of methods of communication and obtaining classified information as well as government decisions and decision making processes regarding national security issues at specific points in time. Disclosing these decision making processes could compromise the ability of the government to make such decisions in the future without undue influence. This could compromise the safety of personnel and disclose the ways in which classified information is transmitted to the highest levels of government. Accordingly I consider the release of the information so marked, would or could reasonably be expected to, cause damage to the security of the Commonwealth. I therefore consider this information exempt under section 33(a)(i) of the FOI Act.

#### **Section 47C – Deliberative processes**

8. I found that the document contains material in respect of which a claim for exemption under subsection 47C(1) of the FOI Act is warranted.

9. Subsection 47C(1) of the FOI Act states '*A document is conditionally exempt if its disclosure under the Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative process involved in the functions of...an agency... or a Minister.*' Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

10. I have taken into account the Guidelines issued by the Australian Information Commissioner noting that one consideration in the exemption under section 47C is whether the document includes content of a specific type, namely deliberative matter. I have determined that some of the material contained in the document is exempt under section 47C as it is deliberative.

11. I then turned my mind to the question of purely factual material. In relation to section 47C considerations under the FOI Act, I have taken into account the Guidelines issued by the Australian Information Commissioner that 'purely factual material' that would not be regarded as deliberative matter would include:

- a. content that is merely descriptive;
- b. incidental administrative content;
- c. procedural or day-to-day content;

- d. the decision or conclusion reached at the end of the deliberative process; and
- e. matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.

12. I have also taken into account that while purely factual material is not considered to be deliberative matter, where a document contains factual material that is related to the provision of policy advice and elaborates its context or likely impact, it may potentially come within the deliberative document exemption.

13. In my view, the document contains a small amount of deliberative material in the form of the author's opinions and speculation. While the author was at liberty to raise such deliberative material for consideration by the Vice Chief of the Defence Force (VCDF), these opinions do not necessarily represent VCDF's position. In my view, release of the identified deliberative matter in the document could do harm to the way in which frank preliminary advice is communicated in future to senior officials in Defence. Taking the above into consideration, I have decided that parts of the document are conditionally exempt under subsection 47C(1) of the FOI Act.

#### **Section 47F - Personal privacy**

14. Upon examination of the document, I identified information, specifically names and personal recollections of experience on deployment belonging to persons other than the applicant. This material satisfies the definition of personal information in section 4 of the FOI Act.

15. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to:

- 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 with in the documents; and
- c. the availability of the information from publicly accessible sources.

16. Against those criteria I have found that this specific information is not readily available from publicly available sources, nor is the information well known. I have decided that this information is conditionally exempt under section 47F of the FOI Act as it would involve unreasonable disclosure of personal information.

#### **Sections 47C and 47F - Public interest considerations**

17. Although some material is conditionally exempt from release, I considered other factors set out in section 11B(3) of the FOI Act. Specifically, I considered if disclosure of this material might promote the objects of the FOI Act, inform public debate on a matter of importance, promote oversight of public expenditure, or allow the applicant further access to their own personal information. My conclusion was that disclosure of these specific opinions by the author would not benefit public interest in any of the ways described in section 11B(3).

18. Instead, disclosure of some information in the document would reveal sensitive considerations associated with options presented to VCDF in relation to classification of service. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the confidentiality of some material contained in the document.

19. There is also a public interest in not disclosing personal information about individual experience of service in the Australian Defence Force where explicit permission has not been given. In this case, personal recollections were given as part of a review by the Nature of Service Branch and were given confidentially for that purpose. Disclosing individuals' names and comments compromises the ability of Defence to collect confidential information of this nature in the future and compromises the individuals' right to privacy. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure.

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

### **Section 24A (1) of the FOI Act**

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

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

*Document lost or non-existent*

*(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.*


### **Searches conducted**

22. The Nature of Service Directorate searched both electronic and hard copy files looking for correspondence matching the scope of Item 2. No documents matching the description provided by the applicant could be located.

23. Based on the above, I am satisfied that no documents could be found matching the scope of this request. Accordingly, I have decided to refuse access under section 24A of the FOI Act.

### **Further Information**

24. Portions of the document matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.

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Gary Pianegonda  
Accredited Decision Maker  
Vice Chief of the Defence Force Group

12 December 2016