



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

Reference: R28355185

**FOI 167/16/17 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:

1. *the final report of the Australian Defence Force Investigative Service, investigation number INV-ADF01-CAN-2010-40;*
2. *the final reports of two Inspector-General ADF inquiries, numbers 28/13 and 31/13; and,*
3. *a document known variously as a “Daily Incident Report”, “Incident Report Summary” or “Daily Summary” for 1 August 2013 and created by staff within the Office of the Chief of Army, for the use of then Chief of Army David Morrison – please note I only require the following sections of that document:*
  - a. *the section under and including the heading “Inappropriate use of ICT”*
  - b. *any section where Mr Morrison has signed, initialled, stamped and/or otherwise marked the document.*

*...excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents, documents that have already been publicly released or media releases, media articles or media statements.*

**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 four documents as matching the description of the request. Specifically:

Item 1 – INV-ADF01-CAN-2010-40 Final Report dated 29 August 2011

Item 2 – 1307011 Inspector General ADF signed report Review of Defence and management progress of investigation of allegations of unacceptable behaviour by Army personnel, Inquiry number 28/13; and

131115 Inspector General ADF signed Report Professional Standards Review of ADF Investigative Service Investigation – Canberra 2010-40 (Jedi Council matters), Inquiry number 31/13

Item 3 – Incident Report Summary – 01 August 2013.

4. I have added an FOI reference number to the documents in the form for release, along with serial numbers as outlined above.

## Decision

5. I have decided to:
  - a. partially release one document, referenced as Item 1, 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 irrelevant and/or considered exempt under section 47F [public interest conditional exemptions - personal privacy] of the FOI Act;
  - b. deny access to the two documents of the request, referenced as Item 2, under section 38 [Documents to which secrecy provisions of enactments apply] of the FOI Act; and
  - c. fully release one document, referenced as Item 3, but 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. consultation with the Office of the Chief of Army, the Australian Defence Force Investigative Service, and the Inspector-General Australian Defence Force (IGADF).

## Reasons for decision

### Section 38 – Documents to which secrecy provisions of enactments apply

7. Subsection 38(1) of the FOI Act exempts a document if disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment. The provision must be specified under 'Schedule 3 - Secrecy provisions' of the FOI Act or a provision of an enactment must expressly apply section 38 of the FOI Act to the document.
8. Schedule 3 includes reference to Regulation 63 of the *Defence (Inquiry) Regulations 1985* (the Regulations).
9. Regulation 63 deals with disclosure of records of reports of Courts of Inquiry, such that a person to whom the Regulation applies is guilty of an offence, under sub-regulation 63(1), if they disclose to a person, or make available to the public generally, information contained in the records or reports of a Court of Inquiry. The definition of a Court of Inquiry, at sub regulation 3 of the Regulations, includes a Chief of Defence Force Commission of Inquiry under Part 8 of the Regulations. Through operation of Part 8 of the Regulations regulation 63 applies to IGADF and Assistant IGADF inquiry reports and records.
10. I note that, on 18 June 2013, the Regulations were amended. The provisions previously applied by sub regulation 63(2) are now provided for under sub regulation 63(1) as described above. The FOI Act, however, has not yet been amended to reflect the change. As established above, the document is subject to sub regulation 63(1). Notwithstanding this, Schedule 3 of the FOI Act affirms this protection and applies section 38 of the FOI Act to the document

thereby making release of the IGADF Inquiry reports is prohibited under the Regulations specified in Schedule 3 of the FOI Act.

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

11. I identified that the document referenced as Item 1 contains the names belonging to people other than the applicant. This information could be used to reasonably ascertain the identity of an individual and therefore satisfies the definition of personal information in section 4 of the FOI Act.

12. To determine whether the disclosure of the identified personal information would be unreasonable, I had regard to the criteria specified in section 47F(2) of the FOI Act.

13. Section 47F(2) states:

*In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*

- (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 document;*
- (c) *the availability of the information from publicity accessible sources;*
- (d) *any other matters that the agency or Minister considers relevant.*

14. Against these criteria, I found:

- a. the specific personal information listed is not well known;
- b. the individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the document; and
- c. the information is not readily available from publicly accessible sources.

15. With reference to the assessment above, I have decided that the release of names of individuals would be an unreasonable disclosure of personal information and is therefore conditionally exempt under section 47F(1) of the FOI Act.

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

### **Public interest considerations – section 47F**

17. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors are that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource.

18. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factor I find particularly relevant to this request is that release of this information could reasonably be expected to prejudice the protection of an individual's right to privacy.

19. None of the factors listed in section 11B(4) [Irrelevant Factors] of the FOI Act were taken into account when deciding whether access would, on balance, be contrary to the public interest.

20. It is for this reason that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47F of the FOI Act.

**Further Information**

21. One of the documents matching the scope of this request contained a dissemination limiting marker. The marker has been struck through as the document is approved for public release.

nicola.viney@d  
efence.gov.au

Digitally signed by  
nicola.viney@defence.gov.au  
DN:  
cn=nicola.viney@defence.gov.au  
Date: 2017.01.04 12:14:40 +11'00'

Nicola Viney  
Accredited Decision Maker  
Associate Secretary Group