



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

Reference: 2017/1023582/qR462605

**FOI 227/16/17 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:

*“Summary report relating to the Australian Defence Force Academy and claims, allegations, findings, disciplinary proceedings and /or complaints of:*

- (i) sexual assault; and/or*
- (ii) harassment; and/or,*
- (iii) sexually inappropriate behaviour; and/or,*
- (iv) bullying since July 1, 2016.”*

*Scope includes only those incidents reported to service police.*

**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 seven documents as matching the description of the request.

4. I have added an Item number to each of the documents, which corresponds with the schedule.

**Decision**

5. I have decided to:

- a. partially release six 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 47E(d) [Documents affecting certain operations of agencies] section and/or section 47F [public interest conditional exemptions-personal privacy] of the FOI Act;
- b. deny access to one document of the request under subparagraph 37(1)(a)[prejudice the conduct of an investigation] of the FOI Act as there is an ongoing civilian police investigation.

### **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. information on the status of continuing civilian police investigations.

### **Reasons for decision**

#### **Section 37 of the FOI**

7. I found that one document contained material which, if disclosed, could reasonably be expected to prejudice the conduct of an investigation of a possible breach of the law.

8. Section 37(1)(a) of the FOI Act provides:

*A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*

*(a) prejudice the conduct of an investigation of a breach, or possible breach of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance.*

9. In forming my decision, I had regard to paragraph 5.82 of the Guidelines which states that to be exempt under section 37(1)(b), “the document in question should have a connection with the criminal law or the processes of upholding or enforcing civil law or administering a law”.

10. I found that the document relates to a current investigation which is still continuing. The release of this information could impact on the direction of the investigations and pre-emptively release material which may be used in evidence. This release could therefore jeopardise the outcome of the investigation.

11. I therefore consider that the material is exempt under section 37(1)(a) of the FOI Act.

#### **Sections 47E of the FOI Act**

9. 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 of an agency.*

10. Upon examination of the documents, I identified a number of dates that directly relate to the reported incidents and/or the management of the incidents listed with the attached schedule of documents. Release of this information may lead to the identification of the victims and/or suspects. The ability of victims to approach Civilian Police, Command and Service Police in a confidential environment is key part of victims reporting sexual incidents; disclosure of the identified material could deter people from reporting such incidents in the future.

11. Therefore, I consider that disclosure of those parts of the documents could reasonably be expected to be prejudicial and I consider these sections of the document conditionally exempt under section 47E of the FOI Act.

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

12. Upon examination of the documents, I identified that they contained personal information, such as: names, signatures, employment identification numbers, other identifying information of personal correspondence, investigation details, and opinions belonging to persons other than the applicant. As people's identities are apparent or reasonably ascertainable from the identified information, I have decided that it constitutes personal information.

13. In accordance with subsection 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
- c. the availability of the information from publicly accessible sources.

14. Against these criteria, I found:

- a. the specific identified information is not well known;
- b. the persons to whom the information relates is not widely known to be (or to have been) associated with the matters dealt with in the documents; and
- c. the specific identified information is not available from publicly accessible sources.

15. After considering all of the above, I am satisfied that the identified information is conditionally exempt under section 47F of the FOI Act.

#### **Public interest considerations**

16. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of relevant factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. While disclosure may promote some of the objects of the FOI Act, I do not consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities.

17. On balance, I believe the potential prejudice to the privacy of persons other than the applicant outweighs any potential benefit from promoting the objects of the Act. Releasing personal recollections of events and opinions regarding those events could reasonably be expected to cause significant stress to persons involved and negatively impact on their wellbeing. Furthermore, it is imperative that both members and civilians feel they can report unacceptable behaviour without the fear of that information being released without proper consideration.

18. In coming to the above decision, I considered subsection 11 B(4) [irrelevant factors] of the Act. None of these factors were taken into account.

19. I therefore decided that it would be contrary to the public interest to release the identified information under sections 47E and 47F of the FOI Act.

**Further Information**

20. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

Digitally signed by  
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Theresa Stinson  
Accredited Decision Maker  
Associate Secretary Group