



Australian Government
Department of Defence

Reference: R33621644

FOI 299/17/18 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:

“...Under the FOI Act I request:

[Item 1]- The terms of reference for the review of the publication standards for military tribunals

[Item 2]- Any correspondence that mentions or relates to the review between the judge advocate general and the registrar for military justice.

For your assistance this review was referred to in the following statement from defence:

"The issue of publication of court martial and Defence Force magistrate lists and outcomes is currently under review. As part of this review, a number of legal and policy considerations are being taken into account. These include an analysis of other jurisdictions and the extent to which they are applicable to service tribunals..."

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 identified one paragraph in a 59 page document as matching the description of the request for Item 2.

Decision

4. I have decided to:

- a. refuse access to Item 1 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;
- b. release one document matching Item 2 in full; and
- c. 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

5. In making my decision, I had regard to:
- a. the terms of the request;
 - b. the content of the identified document 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 from the Judge Advocate General (JAG).

Reasons for decision

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

6. 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

Documents 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.

7. At Item 1 of the request the applicant sought the terms of reference for the review of the publication standards for military tribunals. The office of the Judge Advocate General advised there are no terms of reference and as such no documents exist for Item 1.

Context Statement

8. Previously you were provided with a response to your media inquiry regarding the publication of the Australian Defence Force’s superior disciplinary tribunal proceedings. The response provided to you stated that the issue of publication of court martial and Defence Force magistrate lists and outcomes is currently under review at the highest levels in Defence. This is a part of a broader conversation that is happening with those areas of Defence that have responsibility for Military Justice.

9. The Office of the Australian Information Commissioner is also currently considering the issue of whether it is reasonable for further information regarding these proceedings to be publicly released. This decision will inform Defence in undertaking its review.

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