



Reference: BN21792836

**FOI 004/20/21 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:

*"I am seeking email, memos and ministerial briefs between 21 June 2020 and 28 June 2020 relating to the potential and/or actual deployment of ADF personnel to Victoria in relation to COVID-19."*

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, Defence only considers final versions of documents.

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

**Decision**

4. I have decided to:
- a. release 31 documents in full;
  - b. partially release one document 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 47C [public interest conditional exemptions – deliberative processes]; 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; and
  - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

**Reasons for decision**

**Section 47C – Deliberative process**

6. Upon examination of the documents, I found that they contained information relating to opinions, advice and recommendations relating to proposed amendments to Australian Defence Force nature of service definitions. I found the material to be conditionally exempt under subsection 47C(1) of the FOI Act which 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.*

7. I considered the question of whether the information is purely factual. In relation to section 47C considerations under the FOI Act, I have taken into account the Guidelines which clarifies ‘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 of conclusion reached at the end of the deliberative process
- e. matter that was not obtained, prepared or recorded in the course of, or for the purpose of, a deliberative process.

8. I have also taken into account further detail in the Guidelines (6.73) that advise “‘*purely factual material*’ does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it’.

9. Taking the above into consideration, I am satisfied that this information contained in these documents is conditionally exempt under section 47C of the FOI Act.

10. Section 11A(5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed unless, in the circumstances access to the document at that time would, on balance, be contrary to the public interest. My public interest considerations are detailed below.

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

11. In assessing whether disclosure is on balance, contrary to the public interest, I considered the Guidelines together with a range of factors set out in section 11B(3) of the FOI Act, which favours access to a document:

- a. *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- b. *inform debate on a matter of public importance;*
- c. *promote effective oversight of public expenditure;*
- d. *allow a person to access his or her own personal information*

12. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

13. 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 documents while they are still in the deliberative stages. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

14. I consider that there is a strong public interest in preventing an adverse effect on the ability of Defence to both receive and prepare frank advice, the premature release of which could impede the effective completion of the matters under deliberation.

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

16. After weighing all of the above, I consider that on balance the public interest factors against disclosure outweigh the factors for disclosure of the conditionally exempt material in the document. Accordingly, I have decided that the specific material is exempt under section 47C of the FOI Act.

**Further Information**

17. Documents matching the scope of this request contained a dissemination limiting marker (DLM). When a document have been approved for public release, the DLM has been struck through.

**bronwyn.madge** Digitally signed by  
bronwyn.madge  
Date: 2020.09.28 14:19:20 +10'00'

Bronwyn Madge  
Accredited Decision Maker  
Associate Secretary Group