



Defence Reference: FOI 114/20/21

Army Reference: AHQ/OUT/2020/BQ17570161

## **FOI 114/20/21 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 documents, namely:*

- 1) *Any correspondence and/or complaints and/or directives regarding the Special Air Service Regiment's (SASR) annual "Stirrers" parade, including an event known as the "Cock of the Year" award, between 1 November 2012 and 1 January 2017, and;*
- 2) *Any correspondence and/or directives issued by and/or received by the Special Operations Commander Australia (SOCAUST) regarding the "Stirrers" parade and the "Cock of the Year" award between 1 December 2014 and 30 June 2017.'*

*Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents and documents to or from the applicant are excluded from this request.*

### **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 seven documents, totalling 17 pages, as matching the scope of this request.
4. The decision in relation to each document is detailed in a schedule of documents.
5. I have added an FOI reference number and Item/Document number to each of the documents which correspond with the schedule.

### **Decision**

6. I have decided to:
  - a. release one document in full
  - b. 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 section 33(a)(i) [damage to the security of the Commonwealth], and section 47F [personal privacy] of the FOI Act

- 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**

- 7. 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)
  - e. advice provided by Special Operations Command and Sensitive Issues Management - Army.

### **Reasons for decision**

#### **Section 22 – Edited copies with exempt or irrelevant matter deleted**

- 8. Section 22 of the FOI Act provides that if an agency or Minister decides:

- (i) *to refuse access to an exempt document; or*
- (ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access*

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

- 9. The documents provided at Item 1 Documents 2 and 5 - 7 contain signatures, mobile phone numbers and information that does not relate to the scope of the request. I consider this information as outside the scope of this request.

- 10. Considering all of the above, I decided that it was reasonably practicable to remove the material that did not fall within scope of this request and release the documents in that form.

#### **Exemption claim – Section 33(a)(i) – damage to the security of the Commonwealth**

- 11. Section 33(a)(i) exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

- 12. In regards to the terms ‘could reasonably be expected to’ and ‘damage’, the Guidelines provide:

*5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.*

*5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or*

*damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.*

*5.31 The meaning of damage has three aspects:*

*i) that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*

*ii) the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*

*iii) the organisation or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

13. I identified material in the documents which upon release could reasonably be expected to cause damage to the security of the Commonwealth by making public information which could identify the personnel providing safety or protection to the Commonwealth.

14. Accordingly, I have decided that the specified material is exempt pursuant to section 33(a)(i) of the FOI Act.

#### **Exemption Claim – Section 47F(1) - Personal Privacy**

15. Upon examination of the document, I identified information, specifically names, rank and opinions of individuals other than the applicant.

16. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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 publicly accessible sources
- d. the effect the release of the personal information could reasonably have on the third party.

17. I found that the:

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

18. The release of the names, ranks and opinions of individuals identified in the documents could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

### **Public interest considerations – Section 47F(1)**

19. I have found that some of the identified documents are conditionally exempt under section 47F(1) of the FOI Act. Section 11A(5) 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’.

20. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and it would allow the applicant access to their own personal information.

21. However, disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

22. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- a. the protection of an individual’s right to privacy
- b. the interests of an individual or a group of individuals
- c. an agency’s ability to obtain similar information in the future

23. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47F(1) of the FOI Act.

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

### **Further Information**

25. 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.

**Melanie.Cochbain**

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Melanie.Cochbain

Date: 2020.10.28 12:46:15 +11'00'

**MP Cochbain**

COL

Accredited Decision Maker

Army