



**DEFENCE FOI 305/21/22 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 [REDACTED] request the following 2 documents from the ADF freedom of information which I am aware are standard operating procedures/security reporting policy;*

*First document: -The standard operating procedure/security report policy given to Navy recruits at HMAS Cerberus that outlines the procedure for making security risk reports.*

*Second document: -Identified security risk in Africa, specifically pertaining to fraudulent internet and online intervention upon ADF soldiers.”*

**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 four documents as matching the scope of the request.

**Decision**

4. I have decided to:
- release one document in full;
  - partially release three documents for the first item (First document) of the request 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 47E [public interest conditional exemptions-certain operations of agencies] and section 47F [public interest conditional exemptions-personal privacy] of the FOI Act; and
  - refuse access to the second item (Second document) of the request under section 24A [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

**Material taken into account**

5. In making my decision, I had regard to:
- the terms of the request;
  - the content of the identified documents in issue;
  - relevant provisions in the FOI Act;
  - the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);

- e. advice received from the Royal Australian Navy Recruit School, HMAS *Cerberus* and Defence Security and Vetting Service (DS&VS).

### **Reasons for decision**

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

6. Section 24A of the FOI Act states:

*Requests may be refused if documents cannot be found, do not exist or have not been received*

*Document 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. Paragraph 3.94 of the Information Commissioner Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(1):

*...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...*

8. To ensure that 'all reasonable steps' have been taken in relation to the second item (Second document) of this request, every reasonable avenue of identifying documents related to the scope of the request have been exhausted.

9. Royal Australian Navy Recruit School, HMAS *Cerberus* conducted a search on the Defence Intranet, specifically the Threat Product Library. No documents were identified.

10. The Programming/Course Implementation Officer staff at the Royal Australian Navy Recruit School, HMAS *Cerberus* advised that specific information relating to a region of the world is not provided to Recruits, it is more likely to form part of a briefing provided prior to deployment to the area concerned. No documents were identified.

11. Royal Australian Navy Recruit School, HMAS *Cerberus* advised they do not have anything specific relating to the second item (Second document). The recruits are not given country/continent specific threat briefs. For travel related security information, defence personnel are required to access the Australian government site [smartraveller.gov.au](http://smartraveller.gov.au) to understand the threat level for their intended travel. This is also checked by their unit security officer.

12. DS&VS advised they do not have any specific documents related to *security risk in Africa, specifically pertaining to fraudulent internet and online intervention upon ADF soldiers.*

13. I am satisfied that ‘all reasonable steps’ have been taken to locate the document sought by the applicant. I am satisfied that the documents do not exist, and refuse access to the request under section 24A (1) of the FOI Act.

#### **Section 47E – Certain operations of agencies**

14. On review of the documents, I identified information relating to the names and rank of Defence personnel. I found the material to be conditionally exempt under section 47E(c) of the FOI Act which states:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following: ...*

*(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.*

15. The Australian Information Commissioner has issued Guidelines under section 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. In relation to section 47E(c) of the FOI Act, the Guidelines explain that, where the document relates to the agency’s policies and practices concerning the assessment and management of personnel, the decision maker must address whether:

- a. an effect would reasonably be expected following disclosure; and
- b. the expected effect would be both substantial and adverse.

16. For this exemption to apply, the documents must relate to either:

- a. the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; and
- b. the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

17. The names and rank of Defence personnel have been redacted from the documents. Whilst personnel names are generally disclosed, the names in this instance have been exempt.

18. In my view, it is reasonably likely that if the individual’s identity were released in connection with the content of the documents, they could be subjected to harassment or to a series of inquiries which would detract from their ability to perform their routine business functions.

19. Defence has a responsibility to its personnel with work health and work safety being an important consideration. The release of staff identities in this instance could have a substantial adverse effect on the management of personnel. As the Department has a responsibility to protect its staff, this information has been removed from the documents.

20. Based on my consideration of the above, I am of the view that release of this information would have a substantial adverse effect on the individuals concerned and the management of personnel.

21. Noting all of the above, I have decided that the material is conditionally exempt under section 47E(c) of the FOI Act.

22. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless (in the circumstances) access to the documents at this time would, on balance, be contrary to the public interest. My public interest considerations are set out below.

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

23. On review of the documents, I identified information, specifically photographic images and the name of a third party other than the applicant. I found the material to be conditionally exempt under section 47F of the FOI Act.

24. When assessing whether the disclosure of this 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; and
- d. any other matters that the agency or Minister considers relevant.

25. Against the above criteria I found:

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

26. Taking into account the above factors, I consider the release of the material would be an unreasonable disclosure of personal information of individuals other than the applicant and could reasonably be expected to cause harm to their privacy. I have therefore decided that this information is conditionally exempt under section 47F of the FOI Act.

27. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

### **Public interest considerations – Sections 47E(c) and 47F**

28. 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*

29. 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.

30. While I consider that release of the material removed under sections 47E(c) and 47F may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

31. 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 or harm:

- a. the protection of an individual's right to privacy;
- b. the interests of an individual or group of individuals;
- c. an agency's ability to obtain confidential information;
- d. an agency's ability to obtain similar information in the future; and
- e. the management function of an agency.

32. In my view, it would be contrary to the public interest to disclose the identity of certain Defence members and cause unnecessary distress to them. Furthermore, the public interest is better served in protecting the privacy of the individuals whose personal details are contained within the documents from release to the public at large.

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

34. After weighing all of the above, I consider that, on balance the public interest factors against disclosure outweigh the factors for disclosure. I have therefore decided that it would be contrary to the public interest to release the information considered exempt under sections 47E(c) and 47F of the FOI Act.

### **Further Information**

35. In addition to the documents provided to the applicant the Recruits also do the online Security Mandatory Awareness Training campus course: Annual Security Awareness.

36. One of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where the document has been approved for public release, the DLM has been struck through.

**helen.g**  
**ouzvaris**  
Digitally signed  
by  
helen.gouzvaris  
Date: 2022.02.15  
09:37:11 +11'00'

H Gouzvaris  
Accredited Decision Maker  
Navy Group