



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

Reference: OCA/OUT/2018/BJ459809

**FOI 457/17/18 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:

*... disclosure of the report and all supporting documents of the Unrecovered War Casualties "Army Identification Boards" decision on 20 February 18 in relation to the change of headstone submission of NX143314 Sergeant LEONARD GORDON SIFFLEET, made by Operation Aussies Home on 3 Mar 17 together with Addendum dated 5 Feb 18; and*

*...disclosure of any criteria applied to the balance of probabilities test relied upon by the Board.*

*Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request and duplicates of documents 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 five documents, totalling 77 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/Serial number to each of the documents.

**Decision**

6. I have decided to:
  - a. release two documents in full
  - b. partially release three 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 47E(d) [certain operations of agency – effective and efficient operations], section 47F [public interest conditional exemptions - personal privacy] and section 47G [documents relating to business] 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. consultation with third parties
  - f. advice provided by Unrecovered War Casualties - Army.

### **Reasons for decision**

#### **Conditional Exemption – Section 47E(d) – [certain operations of agencies -effective and efficient operations]**

8. In relation to section 47E(d), the Guidelines explain that for this exemption to apply, the predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.

9. Army maintains a capability to research, recover and identify missing Australian soldiers assumed killed on operations. This capability relies heavily upon the voluntary co-operation of private and non-government agencies to conduct research and access the latest world opinions and processes.

10. Upon assessment of the document I found that it contained information concerning the opinions of a non-government agency not relating to the applicant. Candid comments have been provided on that agency's operating policy. If this information is released, future private and non-government agencies are unlikely to provide candid advice voluntarily. Future comment and co-operation could be expected to be provided at a lower level and quality resulting in future research and identification activities being less effective.

11. Taking into account the above factors, I consider that the release of the information would be an unreasonable disclosure of operational information and is conditionally exempt under section 47E(d) of the FOI Act.

#### **Conditional Exemption - Section 47F(1) – [personal privacy]**

12. Upon examination of the document, I identified information, specifically names and ranks of individuals other than the applicant.

13. 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.
14. 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.
15. The release of the names and ranks of personnel identified in the document could reasonably be expected to cause harm to their privacy. I have considered the elapse of time since the events occurred, and records created, and consider it unreasonable to consult with those individuals over the release of their personal information. 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 is conditionally exempt under section 47F(1) of the FOI Act.

**Conditional Exemption – Section 47G(1)(b) – [business]**

16. Upon examination of the documents, I identified business information of a third party. The Guidelines advise that under section 47G of the FOI Act, a document is conditionally exempt if it discloses information:

*...concerning a person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking (business information), where the disclosure of the information:*

- *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

17. I note that the use of the word “could” in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.

18. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that the effect of disclosing the identified material prior to official publication would have an adverse effect on the quality and level of co-operation provided to Defence by private and non-government agencies in the future. 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 business information and is conditionally exempt under section 47G(1)(b) of the FOI Act.

**Public interest considerations – Section 47E(d), Section 47F(1), and Section 47G(1)(b)**

19. I have found that the identified documents are conditionally exempt under section 47E(d), section 47F(1) and section 47G(1)(b) 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 confidential information
- d. an agency's ability to obtain similar information in the future
- e. the voluntary co-operation of private and non-government organisations with Defence in the future.

23. Releasing details that would identify individuals including rank, position, and the policies of external organisations could cause significant harm to the individuals involved and adversely affect the continuing management of the associated personnel.

24. 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 sections 47E(d), 47F(1) and 47G(1)(b) of the FOI Act.

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

### **Further Information**

26. It should be noted that the information released consists of interpretations and opinions developed by Army.

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**GC Thomas**  
Colonel  
Accredited Decision Maker  
Army