



DEFENCE FOI 405/21/22 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:

- *“Any emails/correspondence/directives/signals/messages in the period 01 November 2021 to 08 March 2022 either to or from the CDF, VCDF, and/or the three service chiefs THAT SUBSTANTIVELY GO relating to ADF preparedness to respond to severe weather events in NSW, QLD, and SA.*
- *Any signal traffic from Joint Operations Command to any operational units directing a response to the January flooding on the Eyre Peninsula and northern SA.*
- *Any signal/message traffic from Joint Operations Command to any operational units directing a response to the February/March flooding of South-East QLD or northern NSW.”*

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 61 documents as matching the description of the 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 number to each of the documents, which corresponds with the schedule.

Exclusions

6. Email addresses, signatures, and telephone numbers contained in documents that fall within the scope of the FOI request and duplicates of documents are excluded from this request. Defence has only considered final versions of documents.

Decision

7. I have decided to:
 - a. release 7 documents in full;
 - b. partially release 54 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) and (ii) [documents affecting national security and defence] and 47F [personal privacy] of the FOI Act.

Material taken into account

8. 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); and
 - e. advice from subject matter experts in Office of the Chief Defence Force, Office of the Vice Chief of the Defence Force, Army, Navy, Air Force and Headquarters Joint Operations Command.

Reasons for decision

Section 33(a)(i) and (ii) – Documents affecting national security of the Commonwealth and defence of the Commonwealth

9. Section 33(a)(i) and (ii) of the FOI Act exempts a document from disclosure if the document would, or could reasonably be expected to, cause damage to the security or defence of the Commonwealth.

10. 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 the disclosure of the 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.

5.28 ‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible...”

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.

11. Further, in regard the ‘defence of the Commonwealth’ the Guidelines at 5.34 provide:

The FOI Act does not define ‘defence of the Commonwealth’. Previous Administrative Appeals Tribunal (AAT) decisions indicate that the term includes:

- *protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

12. I identified material in 2 documents which upon release could reasonably be expected to cause damage to the security and defence of the Commonwealth by making public specific information concerning the operational and capability status of the Australian Defence Force, specifically the Army and Navy.

13. In evaluating the potential harmful effects that the release of the information may have, I considered the current strategic security environment within which the Australian Government and Australian Defence Force operates. By releasing this information, an adversary may be able to assemble a more detailed and nuanced picture of the Australian Defence Force's operational and capability posture, thereby reducing its capacity and capability to secure and defend the Commonwealth and reducing its effectiveness in responding to future events, of any type.

14. Based on the above considerations I have formed the view the material is exempt under section 33 of the FOI Act.

Section 47F - Personal privacy

15. Upon examination of the documents, I identified information, specifically names of individuals other than the applicant, including personalised email addresses and phone numbers.

16. Section 47F of the FOI Act states that:

- 1) *"A document is conditionally exempt if its disclosure...would involve the unreasonable disclosure of personal information about any person (including a deceased person)*
- 2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - 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) *any other matter that the agency or Minister considers relevant."*

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; and
- c. information is not readily available from publicly accessible sources.

18. The release of the names of some of the 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 some of the individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F of the FOI Act.

Public interest considerations – Section 47F

19. I have found that parts of the identified documents are conditionally exempt under section 47F 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.

21. However, disclosure of this information would not increase public participation in Government processes (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of the Government's 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:

- 1) prejudice the protection of an individual's right to privacy
- 2) harm the interests of an individual or a group of individuals

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 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. A number of the documents matching the scope of this request were classified. In applying the exemptions to relevant information, I have removed the classified information from the versions of the documents that are approved for partial release.

Context Statement

26. The Australian Defence Force and Department of Defence (Defence) undertakes regular reviews of its preparedness, including specific annual reviews in preparation for Australia's high risk weather season. In addition, Defence monitors concurrency pressures through the Defence Preparedness Management System. This occurs at regular intervals throughout the year.

27. It is acknowledged that given these reviews speak to Defence's capability and operational capacity, associated information can often be classified to protect this sensitive information. Defence does however formally report, as required, to the Minister for Defence significant preparedness deficiencies.

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Accredited Decision Maker
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