



DEFENCE FOI 519/21/22 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:

“1. Any submission to the DHAAT's Inquiry into Medallic Recognition for Service with Rifle Company Butterworth prepared by Defence.

2. Any material produced by Defence in relation to the Minister's announcement of the inquiry.

3. Any material produced by Defence that discusses the inquiry, including but not limited to internal briefs, memoranda, notes, minutes, or emails.

Limit point 2 and 3 to documents held by Nature of Service Directorate.

Request/inquiry timeframe: from date

07/04/2022 - 12:00am

Request/inquiry timeframe: to date

23/05/2022 - 12:00am”

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 one document as matching the description of the request.

Exclusions

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

Decision

5. I have decided to:

- a. 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 47E(c) [public interest conditional exemptions – certain operations of agencies] of the FOI Act;

- b. refuse item one 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; and
- c. remove irrelevant material under section 22 of the FOI Act.

Material taken into account

6. 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 provided by subject matter experts in the Vice Chief of the Defence Force Executive, Defence Legal, the Defence Honours and Awards Appeals Tribunal and Defence People Group.
7. For the purposes of this decision I have understood the scope of the request to be that the applicant is limiting items two and three to the Nature of Service Directorate (NOS) and is seeking documents produced by NOS in response to the Minister's announcement of the inquiry or that discuss the inquiry.
8. I have further considered that a distinction has been drawn by the applicant between the potential development of a Defence submission (item one) and discussion of the Inquiry (items two and three) and have considered documents with this in mind.

Reasons for decision

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

9. Section 24A(1) of the FOI Act states:

24A 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.*

10. A submission prepared by Defence to the Defence Honours and Awards Appeals Tribunal (DHAAT) Inquiry into Medallic Recognition for Service with Rifle Company Butterworth (DHAAT Inquiry), at the date the request was received, does not exist.

11. To ensure "all reasonable steps" have been taken for this request, every reasonable avenue, including the review of corporate registries and consultation with relevant stakeholders, has been exhausted.

12. I am satisfied all reasonable steps have been taken to locate the documents sought by the applicant. I am satisfied the documents cannot be found or do not exist, and refuse access under section 24A(1) of the FOI Act to item one of the request.

Section 47E(c) – Certain operations of agencies [management and assessment of personnel]

13. In relation to section 47E(c), the Guidelines explain that, where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemptions in section 47E(c) namely, that:

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

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

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

15. Release of the names and contact details of personnel involved in sensitive nature of service matters, including the Defence Honours and Awards Appeals Tribunal Inquiry, could adversely impact those personnel by enabling aggrieved members of the public direct access to them. Providing this protection to personnel involved enables Defence to protect them from receiving abusive and threatening contact from aggrieved members of the public.

16. After reviewing the context of the document being part of a long standing and ongoing appeal for recognition of Service, I have found that there is a reasonable expectation that the release of information would affect the management of personnel.

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

18. Section 11A(5) of the FOI Act allows access to a conditionally exempt document unless, in the circumstances, access to the document would be contrary to the public interest.

Public interest considerations – Section 47E(c)

19. 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 to:

- 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. allow a person to access his or her own personal information
- d. the interests of an individual or a group of individuals; and
- e. the personal management function of an agency.

20. I considered that all of the above factors weighed heavily against disclosure at this time. Disclosure of this information would not increase public participation in government processes nor would it, in my view, increase scrutiny or discussion of government activities.

21. While I consider that release of the material removed under sections 47E(c) 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, the public interest is better served by Defence protecting the health and safety of personnel whose personal details are contained within these documents.

22. In my view, it would be contrary to the public interest to disclose information of Defence members and cause unnecessary distress.

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

Context Statement

24. The DHAAT Inquiry has advised that the public has until 1 July 2022 to make submissions.

25. It should be noted that the DHAAT Inquiry will re-examine the issue of medallic recognition for Australians who served with Rifle Company Butterworth in Malaysia between 1970 and 1989. The NOS Directorate is responsible for providing advice to the Minister for Defence, through the Chief of the Defence Force, on the nature of service for ADF operational deployments. The NOS Directorate does not review or determine matters relating to honours and awards, which is a function of the DHAAT and focus of the Inquiry.

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Accredited Decision Maker
Australian Defence Force Headquarters