



DEFENCE FOI 034/22/23 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. *“The minutes of the three most recent meetings of the Religious Advisory Committee to the Services (RACS).*
2. *The current terms of reference/instrument establishing the RACS.*
3. *The most recent version of the Memorandum of Understanding/Memorandum of Arrangement between the RACS and Defence.*
4. *The document outlining the financial contribution/tithe currently payable by chaplains.*
5. *The most recent report/advice provided by RACS to the Minister.*
6. *The most recent report/advice provided by RACS to (i) the Chief of the Defence Force and (ii) each of the Service Chiefs.”*

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 eight 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/document number to each of the documents, which corresponds with the schedule.

Exclusions

6. 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 sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Decision

7. I have decided to:
 - a. release two documents 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 47E(c) [public interest conditional exemptions-certain operations of agencies] of the FOI Act and section 47F [public interest conditional exemptions-personal privacy] of the FOI Act;

- c. refuse items four and five 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
- d. remove irrelevant material under section 22 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);
 - e. advice received from officers within the department, specifically Defence People Group, and
 - f. consultation with third parties.

Reasons for decision

Section 22 – Edited copies with exempt or irrelevant matter deleted

9. 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.

10. Considering 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.

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

11. Upon examination of the documents, I found that they contained information concerning the management and assessment of personnel, particularly in relation to recruitment, training, and future posting and promotion planning.

12. 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 or 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.

13. 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.

14. It is important that Defence is able to manage and assess its personnel. It is also of fundamental importance to operational requirements that Defence is able to amend plans for management of individual personnel if appropriate.

15. Based on my considerations of the above, I am of the view that release of this information would have a substantial adverse effect on the individuals concerned, and more generally on the management and assessment of personnel.

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

Section 47F – Personal privacy

17. On review of the documents, I identified information, specifically personal information of third parties, such as names, rank and personal information. I found the material to be conditionally exempt under section 47F of the FOI Act.

18. 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.

19. 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.

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

21. 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 – Section 47E(c) and 47F

22. 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

23. 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.

24. Additionally, I consider that disclosure of the conditionally exempt material would not inform public debate on any matter of public importance or promote oversight of public expenditure in any meaningful way. Furthermore, the public interest is better served in protecting the privacy of individuals whose personal information are contained within these documents from release to the public at large.

25. 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.

26. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of material contained in the document. Releasing this information could reasonably be expected to adversely impact on the agency's ability to gain the confidence of personnel and the provision of relevant information in the future. This could significantly undermine any future management process and the ability of the department to undertake personnel planning activities.

27. In my view, it would be contrary to the public interest to disclose personal information of third parties 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 document from release to the public at large.

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

29. 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.

Section 24A (1) of the FOI Act – Requests may be refused if documents cannot be found, do not exist or have not been received

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

Documents 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.*

31. To assist in locating records within scope of the FOI application, searches of the Objective database were conducted by Defence People Group, including Defence Force Recruiting, the RACS Secretariat, and the ADF Chaplains Committee. The total time taken to conduct searches was six hours. No area located any records matching items 4 – 5 of the scope of the request.

32. I am satisfied that "all reasonable steps" have been taken to locate the records sought by the applicant. I am satisfied that the documents do not exist or cannot be located, and refuse access to items 4 – 5 of the scope of the request under section 24A(1) of the FOI Act.

Third party consultation

33. I decided to consult with third parties regarding their information which was contained in the documents. In response to this consultation, the third parties advised that they did not wish to contend that any information was exempt on the grounds of personal privacy.

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Katrina Ryan
Accredited Decision Maker
Defence People Group