



DEFENCE FOI 248/21/22 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 request any a summary document detailing reports, minutes or briefings on the issue of lost, missing or recovered weapons, explosives or ordnance within Air Force, Army, and Navy since January 2020. In each case, could we please get the date, description of incident, and relevant unit involved.”

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. In accordance with section 17(1)(c)(i) of the FOI Act:

1) Where:

.....

c) The agency could produce a written document containing the information in discrete form by:

i. the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information.

4. One document was generated under section 17 of the FOI Act in line with the scope of this request

5. The document has been produced in the form of a table detailing the date, description of incident, and relevant unit involved.

Decision

6. I have decided to deny access to the source documents and data on the grounds that the material is considered exempt under section 33(a)(i) and (ii) [Documents affecting security or defence of the Commonwealth] of the FOI Act.

7. Upon examination and consideration of the documents and data within scope, I have considered section 3(1) that is, the Objects of the FOI Act, and determined that Defence is able to generate a document which is line with the scope of the request but removes the exempt material.

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 received from Air Force, Army, Navy and Security & Estate Group.

Reasons for decision

Section 33 – Documents affecting national security or 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 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 to 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. Having considered the Guidelines in relation to the identified information, I have formed the view that the source documents and data requested, namely the reports, minutes or briefings, should they be released would, or could reasonably be expected to, cause damage to the security and defence of the Commonwealth by making public aggregated information that

would speak to the security policy and procedures of Defence and in addition provide specific operational contextual information regarding the referenced incidents.

13. In making this decision I had regards to the impact on trust and confidence and separately, the strategic security environment within which Defence operates.

14. Accordingly, I have decided that the source documents and data is exempt under section 33 of the FOI Act but have separately provided under section 17 of the FOI Act one document with exempt information removed.

Additional Information

15. The incidents of lost ammunition, weapons and explosive ordnance comprise largely small quantities of small arms ammunition, inert and sub-munition training aids. In the majority of cases, Defence's extant stocktake, training and audit procedures identified the lost items and they were reported accordingly. Where appropriate, incidents are referred to relevant policing authorities for further action.

megan.u
nicomb

Digitally signed by
megan.unicomb
Date: 2022.08.09
11:12:52 +10'00'

Megan Unicomb
Accredited Decision Maker
Australian Defence Force Headquarters