



DEFENCE FOI 569/21/22 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:

“....the most recent monthly IGADF noting brief on progress of significant cases or issues.”

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. Personal email addresses, signatures, PMKeyS numbers, and telephone numbers contained in the document that falls 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 partially release the 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 sections 37 [Documents affecting enforcement of law and protection of public safety], 47C [Public interest conditional exemptions – deliberative processes], 47E [Public interest conditional exemptions – certain operations of agencies] and 47F [Public interest conditional exemptions - personal privacy] of the FOI Act.

Material taken into account

6. In making my decision, I had regard to:
- the terms of the request;
 - the content of the identified document in issue;
 - relevant provisions in the FOI Act;
 - the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
 - the relevant provisions of the *Defence (Inquiry) Regulations 1985 / Defence (Inquiry) Regulations 2018* (the Regulations); and
 - advice received from the Office of the Inspector-General of the Australian Defence Force.

Reasons for decision

Section 37 – Documents affecting enforcement of law and protection of public safety

10. Section 37(1)(a) of the FOI Act provides:

- 1) A document is an exempt document if its disclosure under the FOI Act would, or could reasonably be expected to:*
- a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance.*

11. I have examined the document and identified that the document discusses information that may be subject to a current investigation for a possible breach of the law. I am of the view that disclosure of that information could reasonably be expected to prejudice the conduct of an investigation of a breach or possible breach of the law.

12. I have decided that this material is exempt under section 37(1)(a) of the FOI Act.

Section 47C – Public interest conditional exemptions - Deliberative processes

13. Section 47C of the FOI Act conditionally exempts from disclosure documents that would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice, or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- a. an agency, or
- b. a Minister; or
- c. the Government of the Commonwealth.

14. The document contains information that, if released, would disclose matter (deliberative matter).

7. I considered the question of whether the information is purely factual. In relation to section 47C considerations under the FOI Act, I have taken into account the Guidelines which clarifies ‘purely factual material’ that would not be regarded as deliberative matter would include:

- a. content that is merely descriptive;
- b. incidental administrative content;
- c. procedural or day to day content;
- d. the decision of conclusion reached at the end of the deliberative process; and
- e. matter that was not obtained, prepared or recorded in the course of, or for the purpose of, a deliberative process.

8. I have also taken into account further detail in the Guidelines (6.73) that advise “‘Purely factual material’ does not extend to factual material that is an integral part of the

deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it'.

9. The document contains material communicating opinion, advice and recommendations for the routine update for the Chief of Defence Force. This material contains the processes of dealing with particular issues, and proposing options for consideration closely intertwined with factual information.

10. There is a risk, release of the deliberative matter contained in the document would harm the smooth operation of Defence business including the ability for Defence to present and communicate frank preliminary advice at the highest levels to the Government.

11. Taking the above into consideration, I am satisfied that this information contained in this document is conditionally exempt under section 47C of the FOI Act.

12. Section 11A(5) of the FOI Act 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.

15. My public interest considerations are set out below.

Section 47E – Public interest conditional exemptions - certain operations of agencies

16. Upon examination of the document, I identified information relating to investigations into matters of personnel management and assessment of personnel. Section 47E(c) of the FOI Act states that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

.....

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

17. I consider that the disclosure of information in relation to the investigation and inquiry processes could reasonably be expected to have a substantial adverse effect on the management of personnel by Defence.

18. In the conduct of inquiries and investigations, an agency can be expected to create documents that include evidence taken from personnel about other personnel of Defence. It is highly beneficial for an agency's management and assessment of personnel that the evidence it collects in such incidents is as frank as possible. Anyone providing such evidence would generally expect that details of their involvement in the inquiry or investigation will not be widely disclosed. Disclosure of this information could reasonably be expected to affect the willingness of people to provide evidence for future incident reporting activities which, in turn, would have a substantial adverse effect on the management or assessment of the agency's personnel.

19. Taking the above into account I consider that the identified document contains information which is conditionally exempt under section 47E(c) of the FOI Act.

20. My public interest considerations are set out below.

Section 47F – Public interest conditional exemptions - personal privacy

21. Upon examination of the document, I identified information, specifically names, opinions and other personal information of individuals (third-parties) other than those connected to the application of this FOI request.

22. 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; and
- d. the effect the release of the personal information could reasonably have on the individual.

23. Against the criteria, I found:

- a. the specific personal information listed is not well known;
- b. the individuals whose personal information is contained in the document are not widely known to be associated with the matters dealt with in the document; and
- c. the information is not readily available from publicly accessible sources.

24. The release of the personal information identified in the document could reasonably be expected to cause harm to third parties. The persons to whom this information relates are likely to have had no expectation that this personal information would be disclosed in connection with their association with the subject matter of the document.

25. Taking into account the above factors, I consider that the release of the personal information of individuals would be an unreasonable disclosure of personal information and is conditionally exempt under section 47F of the FOI Act.

26. My public interest considerations are set out below.

Sections 47C, 47E and 47F - Public interest considerations

27. I have found that the identified document is conditionally exempt under sections 47C, 47E and 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'.

28. 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 objectives of the FOI Act, as information held by the government is a national resource.

29. While I note that the release of the information being withheld may be of interest to the applicant, it would not inform public debate on any matter of public importance in any meaningful way. The remaining factors contained in section 11B(3) are not relevant to the present case.

30. 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. the management function of an agency;

- d. the administration of justice generally, including procedural fairness;
- e. could reasonably be expected to prejudice the management function of an agency; and
- f. could reasonably be expected to prejudice the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General.

31. On balance, I consider that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. Releasing details that would identify an individual including name, employment information and in some cases personal opinion could cause significant harm to the individual involved and adversely affect the management of personnel. The public interest is better served in this case by maintaining the personal privacy of third parties named.

32. The ability of IGADF to conduct Inquiries and Investigations in private is an essential function of the office and must be preserved. Disclosing this type of material would prevent IGADF from collecting confidential information such as statements and/or representations in the future, specifically in the context of its complaint management and investigation function.

33. 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 47C, 47E(c) and 47F of the FOI Act.

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

Further Information

35. The document matching the scope of this request was classified and contained a dissemination limiting marker (DLM). I have declassified the document that is approved for release and the DLM has been struck through.

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MJ Berrisford

Accredited Decision Maker

Office of the Inspector-General of the Australian Defence Force