



BN51787501

DEFENCE FOI 100/22/23 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:

"I kindly request all 'DASA Occurrence Reports' (DASR Form 44) and 'Notification of UAS Operation Under A Standard Scenario forms' (DASR Form 150) submitted to the Defence Aviation Safety Authority (DASA) based on the following separate search queries:

Search Query 1:

'DASA Occurrence Reports' (DASR Form 44) submitted during the period 1 April 2021 to 30 April 2021 (inclusive) that contain the keyword: drone.

Search Query 2:

Submitted 'Notification of UAS Operation Under A Standard Scenario' forms (DASR Form 150) that contain a Period of Operation date range equal to or between 1 April 2021 to 30 April 2021 (inclusive).

I also kindly request that personal details be limited to the full names of individuals involved in any applicable FOI response."

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 13 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.

Decision

6. I have decided to:
 - a. refuse the request of search query one under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act;
 - b. partially release 13 documents relating to search query two of the request 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
 - c. remove irrelevant material under section 22 of the FOI Act.

Material taken into account

7. 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; and
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reasons for decision

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

8. 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.

9. Paragraph 3.90 of the Information Commissioner Guidelines advises the kind of detail this statement of reasons could include to refuse a request under section 24A(1):

...the steps that were taken to search for the document, including the dates as to when the searches were conducted, the search parameters used, the time taken to conduct the search and whether any relevant backups were examined...

10. To ensure that “all reasonable steps” have been taken in this request, every reasonable avenue of locating documents in scope of search query one has been exhausted.

11. Personnel within the DASA undertook electronic searches of the Defence records management system (Objective), SharePoint, and the DASA Occurrence Reporting mailbox for records in scope. No documents were located.

12. Based on the above I am satisfied that “all reasonable steps” have been taken to locate the requested documents. I have therefore decided to refuse item one of the request under section 24A(1) of the FOI Act.

Sections 47E – Certain operations of agencies

13. Upon examination of the documents, I identified 13 documents containing information relating to Defence personnel, including names, contact numbers and email addresses. Subsections 47E(c) of the FOI Act states:

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;

14. The Australian Information Commissioner has issued Guidelines under section 93A to which regard must be had for the purposes of performing a function, or exercising a power,

under the FOI Act. In relation to subsection 47E(c) of the FOI Act, 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 whether:

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

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

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

16. The information contained within the documents identify personnel who have been involved with uncrewed aerial system operations. At times, these operations can be sensitive in nature, and attract the interest of the public. Releasing details of Defence personnel involved in these operations could reasonably be expected to increase the likelihood of these individuals being contacted directly, or harassed, regarding their involvement in the subject matter.

17. In conclusion, I am satisfied that the material is conditionally exempt under section 47E(c) of the FOI Act.

18. 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 consideration – Section 47E

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:

- (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

20. 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.

21. 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; and/or

c. the management function of an agency.

22. 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. There is also a public interest in maintaining the confidentiality of the names and contact details of Defence personnel who are involved in UAS operations, where there is an expectation that Defence manages personnel information in a sensitive way.

23. Noting 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 subsection 47E(c) of the FOI Act

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

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Anthony Stainton
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Accredited Decision Maker
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