



## DEFENCE FOI 233/22/23 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] (the applicant), ABC Radio National on the 25th of October 2022 under the *Freedom of Information Act 1982* (FOI Act) for access to:

- *All documents held by the Department of Defence that indicate how many reports have been made under The Reporting and Management of Notifiable Incidents policy related to defence personnel who have suspected/potential connections to extremist or supremacist groups or ideologies, and the outcome of those reports.*
- *All documents held by the Department of Defence that indicate how many investigations into extremism or those who advocate supremacist ideology among current and prospective personnel Defence has carried out, and the outcome of those investigations.*
- *The scope excludes any duplicate documents or drafts.*
- *The time period for this request is 1 January 2020 to date.*

### 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 three (3) documents as matching the description of the request.

4. I have added a FOI reference number and Item/Document number to each of the documents.

### Exclusions

5. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request and documents sent to or from the applicant are excluded from this request. The Department of Defence (Defence) has only considered final versions of documents.

### Decision

6. I have decided to partially release three (3) 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 sections 47E(d) [Public interest conditional exemptions-certain operations of agencies] 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 22 – Edited copies with exempt or irrelevant matter deleted**

8. The documents contain information (mobile telephone numbers, signatures) that do not relate to the scope of the request. As such, I have considered this information as falling outside the scope of the request.

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

9. Section 47E(d) of the FOI Act provides as follows:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to...*

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

10. The Guidelines at paragraph 6.123 provide that:

*The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.*

11. Unauthorised disclosure of information potentially identifying investigative processes, procedures, the management of suspects, witnesses and their information, could reasonably be expected to have a substantial adverse effect on Defence's management of complaints in the future.

12. The disclosure of names, positions/ranks and contact details of employees of the Commonwealth, including Defence, could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of their operations as departments and agencies all have procedures in place to manage contact with members of the public and answer queries.

13. The release of these names, positions/ranks and direct contact details would undermine the purpose of public facing inquiries teams to receive and manage enquiries from the public and would result in a diversion of resources away from the performance of normal duties.

14. Based on my considerations of the above, I am of the view that the release of information identified within the documents, would have a substantial adverse effect on the proper and efficient conduct of the agency and is therefore conditionally exempt under section 47E(d) of the FOI Act.

15. 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.*

### **Public interest conditional exemptions – Section 47E**

16. In assessing whether disclosure is, on balance, contrary to the public interest, I considered a range of factors set out in section 11B(3) of the FOI Act and the Guidelines which favour access to a document that would:

- 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.*

17. 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.

18. While I consider that release of the material removed under section 47E(d) may be of interest to the applicant, disclosure of the conditionally exempt material would not inform public debate. Additionally, the public interest is better served in protecting the information directly related to suspects and witnesses from release to the public at large.

19. It is for these reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure in many instances and I deem the information exempt under section 47E(d) of the FOI Act.

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

#### **Further Information**

21. As part of research for this request, I became aware of other sources and holdings of information within the Defence that could align 'in part' to the scope of this request. In some instances the information was provided and/or collected from agencies exempt from the FOI Act under *Schedule 2, Part I – Exempt agencies*. In other areas I noted information sources and documents that are exempt under:

*Schedule 2, Part II – Agencies exempt in respect of particular documents*

*Division 1*

*Department of Defence, in relation to documents in respect of:*

*(a) the collection, reporting or analysis of operational intelligence...*

22. Due to the nature of these documents and the partner agencies involved, I determined that reviewing these types of documents for this FOI request was not required as they form part of exempt agencies as outlined above.

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Daniel [redacted]  
Accredited Decision Maker  
Joint Capabilities Group