



## DEFENCE FOI 201/22/23 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] (the applicant) under the *Freedom of Information Act 1982* (FOI Act) for access to:

*“All briefing documents provided by Air Vice-Marshal Barbara Courtney AM, Head Royal Commission Defence and Veteran Suicide Taskforce to Minister of Defence and/or Minister of Veterans Affairs, regarding defence and veteran suicides. Timeframe: 15/07/2022 – 14/10/2022”*

### 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.

### 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 [public interest conditional exemptions – certain operations of agencies] and 47F [public interest conditional exemptions-personal privacy];
  - c. refuse items 3, 4, 5 and 6 of the request under section 34(1)(c) [Cabinet documents] of the FOI Act; and item 9 Serial 1 under section 22 [Access to edited copied with exempt or irrelevant matter deleted] as the document would be meaningless and of no value once the exempt material is removed; 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 from the departmental officers with responsibility for the matters relating to the documents to which you sought access; and
- f. advice from the Department of Prime Minister & Cabinet (DPMC) on Cabinet-related material.

## Reasons for decision

### Section 34 – Cabinet documents

9. Upon examination of the documents, I identified information, specifically relating to deliberative matters for the Minister regarding the Cabinet submission and Cabinet related meetings.

10. Section 34 of the FOI Act states:

*(1) A document is an exempt document if:*

*(a) both of the following are satisfied:*

*(i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*

*(ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or*

*(b) it is an official record of the cabinet; or*

*(c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or*

*(d) it is a draft of a document to which paragraph (a), (b) or (c) applies.*

*(2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.*

*(3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.*

11. In regards to section 34 of the FOI Act, the Guidelines state:

*Cabinet documents (s 34)*

*5.55 The Cabinet exemption in s 34 of the FOI Act is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined. ... [T]his exemption is not subject to the public interest tests. The public interest is implicit in the purpose of the exemption itself.*

12. The Guidelines also state:

*Documents included in exemption*

*5.59 The Cabinet exemption applies to the following classes of documents:*

*(a) Cabinet submissions that:*

- (i) *have been submitted to Cabinet; or*
- (ii) *are proposed for submission to Cabinet; or*
- (iii) *were proposed to be submitted but were in fact never submitted and were brought into existence for the dominant purpose of submission for the consideration of Cabinet (s 34(1)(a))*
- (b) *official records of the Cabinet (s 34(1)(b))*
- (c) *documents prepared for the dominant purpose of briefing a minister on a Cabinet submission (s 34(1)(c))*
- (d) *drafts of a Cabinet submission, official records of the Cabinet or a briefing prepared for a minister on a Cabinet submission (s 34(1)(d)).*

13. The relevant documents in the scope of this request are exempt as they were brought into existence for the dominant purpose of briefing a Minister on a document that has been submitted to Cabinet for consideration and was brought into existence for the dominant purpose of submission for the consideration of Cabinet. If disclosed, the documents would reveal a Cabinet deliberation that has not been officially disclosed.

14. The Guidelines state that agencies should consult DPMC on any Cabinet-related material identified as being within the scope of an FOI request. DPMC have advised that they support the use of section 34 of the FOI Act in relation to the specified material.

15. Based on the above reasoning, I consider the specified documents to be exempt under section 34 of the FOI Act.

16. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to you with deletions but have decided against this course of action as the documents would be meaningless and of little or no value once the exempt material is removed.

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

17. Upon examination of the material, I identified documents containing information relating to Defence personnel contact details and identification.

18. Section 47E 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:*

...

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

19. The Guidelines explain the term ‘substantial adverse effect’ to broadly mean:

*5.20 ... an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person. The word ‘substantial’, taken in the context of substantial loss or damage, has been interpreted as ‘loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal.’*

20. The Guidelines further explain:

*6.101 For the grounds in [section 47E(d)] to apply, the predicted effect needs to be reasonably expected to occur. ... There must be more than merely an assumption or allegation that damage may occur if the document were to be released.*

*6.103 An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the decision maker's statement of reasons, if they can be included without disclosing exempt material.*

21. Departmental staff names as well as their direct contact details have not been released. Defence has dedicated avenues of communication for interfacing with the public. It is submitted that the release of this specified information, which is not publicly available, would divert members of the public through incorrect/inappropriate channels and could substantially reduce the efficiency of Defence's 'proper and efficient' arrangements for responding to correspondence. As such, I submit that the release of this information could substantially and adversely affect Defence's operations.

22. Material about the physical location of the taskforce has also been exempt from disclosure. In assessing whether disclosure could be expected to adversely affect the operations of Defence, I consider that there is no public interest in disclosing the specific physical location of operations. There are dedicated, appropriate avenues of communication with the public and attending a physical site without prior arrangement is not considered one of these.

23. For the reasons above, I consider that the release of this information would have a substantial adverse effect on the proper and efficient conduct of the operations of Defence and is, therefore, exempt under section 47E(d) of the FOI Act.

24. 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 further below.

### **Section 47F - Personal privacy**

25. Upon examination of the documents, I identified that certain material contained personal information of individuals other than the applicant.

26. Section 47F of the FOI Act states that:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
  - (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;*
  - (d) any other matters that the agency or Minister considers relevant.*

27. The Guidelines state, at paragraph 6.140, when assessing whether the disclosure of personal information is unreasonable, the following factors must be considered:

- 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; and
- c. the availability of the information from publicly accessible sources.

28. Against the criteria, I found:

- a. the author of the document is identifiable;
- b. the specific personal information listed is not well known;
- c. the information is not readily available from publicly accessible sources; and
- d. no public purpose would be achieved through release.

29. I have identified information regarding names, contact details and locations which is not publicly available. The release of this personal information could reasonably be expected to cause harm to the individual's privacy.

30. Taking into account the above factors, I consider that the release of personal information that does not involve the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F of the FOI Act. My public interest considerations are set out below.

#### **Public interest considerations – Sections 47E and 47F**

31. I find the identified material conditionally exempt under sections 47E and 47F of the FOI Act.

32. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines together with a range of factors that favour access to a document set out in section 11B(3) [Public interest exemptions – factors] of the FOI Act.

33. In coming to my decision, I had regard for the Guidelines, specifically paragraph 6.22, in relation to '*public interest factors against disclosure*' and found that the identified material, if released could reasonably be expected to prejudice the protection of an individual's right to privacy.

34. While I note that the release of this material would be of some interest to the applicant, I do not consider there to be any relevant public interest factors favouring disclosure. More specifically, I also do not consider this information, if released, would inform debate on matters related to Defence or Government administration, enhance scrutiny of government decision making or promote the objects of the FOI Act more broadly.

35. Noting the above, I have decided that disclosure of the specified material to be conditionally exempt under sections 47E and 47F of the FOI Act.

#### **Section 22 – Access to edited copies with exempt or irrelevant matter deleted**

36. Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to provide an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

37. I have decided that parts of documents marked 's22' would disclose information that could reasonably be regarded as irrelevant to your request, and have, therefore, prepared an edited copy of the documents with the irrelevant material deleted, pursuant to section 22(3) of the FOI Act.

38. The remainder of the document has been considered for release to you as it is relevant to your request.

**Further Information**

39. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

Danielle

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Date: 2022.11.25

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Danielle

Accredited Decision Maker

Associate Secretary Group