



DEFENCE FOI 240/22/23 – STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the request by [REDACTED], dated 11 November 2022, by the Department of Defence (the Department), for access to the following under the *Freedom of Information Act 1982* (FOI Act):

“I [REDACTED], request documents or briefs, which instigated the creation of “INSTRUMENT OF ALLOTMENT OF PERSONS SOMALIA 20 OCTOBER 1992 TO 30 NOVEMBER 1994 SCHEDULE 2 ITEM 14 DATED 15 FEB 2007.”

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 six 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 four 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(d) [public interest conditional exemptions – certain operations of agencies] and 47F [public interest conditional exemptions – personal privacy]; and
 - c. 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; 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 47E(d) – Public interest conditional exemptions – certain operations of agencies

9. Subsection 47E(d) 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

10. In relation to section 47E(d), the FOI Guidelines explain that for this exemption to apply, *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. Names, positions/ ranks and contact details of Defence employees are exempt under section 47E(d) of the FOI Act on the basis that there are relevant procedures in place to manage contact with members of the public and answer queries, and that disclosure of names and direct contact details would have a substantial adverse effect on the proper and efficient conduct of their operations.

12. As release of this information 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. I consider disclosure of the material at issue would have a substantial and adverse effect on the proper and efficient conduct of these operations.

13. Noting the above, I am satisfied that the information contained in these documents is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

14. Section 47F of the FOI Act states:

(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).

15. The FOI Act shares the same definition of 'personal information' as the *Privacy Act 1988* (Cth). The Guidelines provide that:

6.128 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a. whether the information or opinion is true or not; and*
- b. whether the information or opinion is recorded in a material form or not.*

16. I found that the document contains personal information of another person. This includes their name which would reasonably identify a third party.

17. In my assessment of whether 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
- d. The effect the release of the personal information could reasonably have on the third party

18. I found that the individual whose personal information is contained in the documents is not widely known to be associated with the matters dealt with in the document and the information is not readily available from publicly accessible sources.

19. Accordingly, I am satisfied that the information is exempt under section 47F(1) of the FOI Act.

Public interest considerations - Section 47E(d) and 47F

20. 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; and*
- (d) allow a person to access his or her own personal information.*

21. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Defence 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.

22. While I consider that release of the material removed under section 47E(d) and 47F 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. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure. Furthermore, the public interest is better served in protecting the privacy of individuals whose personal details are contained within these documents from release to the public at large.

23. 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 fair treatment of individuals;
- c. an agency's ability to obtain confidential information; and
- d. an agency's ability to obtain similar information in the future.

Further Information

24. 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.



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