



DEFENCE FOI 416/22/23

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the request by [REDACTED] (the applicant), dated and received on 01 February 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“I seek copies of any such Orders/Instructions issued from Defence or Chief of Navy, or any other “Command” organisation with respect to Australia Day this year.

I seek copies of Ship’s Daily Orders which contain instructions/altered arrangements for Australia Day this year.”

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 two documents falling within the scope of the request.

Exclusions

4. 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

5. I have decided to:
 - a. partially release two documents in accordance with section 22 (*access to edited copies with exempt or irrelevant matter deleted*) on the grounds that the deleted material is considered exempt under sections 33(a)(i) [*documents affecting national security, defence or international relations*], 47E(d) [*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 have had regard to:
 - a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions of the FOI Act; and
 - d. section 93A of the FOI Act, the Guidelines published by the Office of the Australian Information Commissioner (the Guidelines).

REASONS FOR DECISION

Section 22 – ‘Access to edited copies with exempt or irrelevant matter deleted’

7. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse access to an exempt document or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.
8. Two documents contain information (mobile telephone numbers, signatures and PMKeyS numbers) 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.
9. I am satisfied it is reasonably practicable to remove the irrelevant and exempt material and release the documents in an edited form.

Section 33(a)(i) – ‘Documents affecting national security, defence or international relations’

10. Section 33(a)(i) of the FOI Act states:

A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to;

(i) the security of the Commonwealth

11. In regards to the terms ‘could reasonably be expected to’ and ‘damage’, the Guidelines provide:

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future

....

5.31 The meaning of ‘damage’ has three aspects:

- i. that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. the organisation or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

12. In regards to ‘security of the Commonwealth’, the Guidelines provide:

5.29 The term ‘security of the Commonwealth’ broadly refers to:

- a. *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests*
 - b. *the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations (see definition in s 4(5))*
13. The documentation identifies administrative and logistical information used by the Royal Australian Navy (RAN).
14. I identified material in the documents which, upon release, could reasonably be expected to cause damage to the security of the Commonwealth. If this information was shared with members of the public, the information could be used to interfere with future events.
15. Accordingly, I am satisfied the information is exempt under section 33(a)(i) of the FOI Act.

Section 47E(d) – ‘Public interest conditional exemptions – certain operations of agencies’

16. Section 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 the agency.

17. 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.

18. In the case of *ABK v Commonwealth Ombudsman* [2022] AICmr 44, the Information Commissioner (IC) found that where the direct email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under s47E(d). The IC made this determination due to reasonable expectation that the release of staffs' direct contact details would undermine the operation of established channels of communication with the public. Further, the IC accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.
19. I am satisfied that were the position details of Defence personnel made publicly available, it would have substantial adverse effects on the proper and efficient operation of extant public communication channels. Further, I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of Defence personnel. Disclosure of family names, email addresses and phone numbers could therefore reasonably be expected to prejudice the operations of Defence.
20. The Guidelines provide, at paragraph 6.120, that I should consider whether disclosure of the information ‘could reasonably be expected to lead a change in the agency’s processes that would enable those processes to be more efficient.’ Given that the direct

contact details within the documents are not publicly available and that more appropriate communication channels are already available, I am satisfied that release of the information could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.

21. Accordingly, I am satisfied that specific ranks and positions contained within the documents are exempt under section 47E(d) of the *Freedom of Information Act 1982* (Cth).

Section 47F – ‘Public interest conditional exemptions - personal privacy’

22. 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).

23. 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.*

24. I found that the documents contain personal information of other people. This includes names and information which would reasonably identify a third parties.

25. In my assessment of 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 documents
- c. The availability of the information from publicly accessible sources
- d. The effect the release of the personal information could reasonably have on third parties

26. I found that the specific personal information listed is not well known, individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents and the information is not readily available from publicly accessible sources.

27. Accordingly, I am satisfied that the information is exempt under section 47F of the FOI Act.

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

28. Section 11A(5) of the FOI Act states:

(5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

29. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being:

(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.

30. However, disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

31. 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. An agency's ability to obtain confidential information; and

d. An agency's ability to obtain similar information in the future

32. It is in the public interest that Defence efficiently and productively operate, with regard for the health and wellbeing of its personnel. As I have established above, the release of the family names, email addresses and phone numbers of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Extant communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of Defence personnel should therefore not be disclosed, as the public interest against their disclosure outweighs public interest in their release.

33. Furthermore, while I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of the material contained within the documents. In my view, it would be contrary to the public interest to disclose the personal information of Defence members and cause unnecessary distress to them.

34. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

35. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure and the information exempt under section 47E(d) and 47F of the FOI Act.

FURTHER INFORMATION

36. 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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Accredited Decision Maker
Navy Group
Department of Defence