



DEFENCE FOI 484/22/23 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] received on 13 February 2023 under the *Freedom of Information Act 1982* (FOI Act) for access to:

“...a copy of the Director of Military Prosecutions finalised estimates briefing pack, including an index of back pocket briefs, for the 2023 February Supplementary Budget Estimates.”

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 one document as matching the description 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 release the document in part 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 section 47E [public interest conditional exemptions – certain operations of agencies] of the FOI Act.

Material taken into account

6. 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

7. 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.

8. 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.

9. I have identified that the document contains direct contact information of Defence staff.

10. 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 staff's 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.

11. I am satisfied that if the contact details of Defence personnel were made publicly available, it would have substantial adverse effects on the proper and efficient operation of existing 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 phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.

12. Accordingly, I am satisfied that this information is conditionally exempt under section 47E(d) of the FOI Act.

13. Under section 11A(5) of the FOI Act, Defence must give you access to conditionally exempt material unless in the circumstances it would be, on balance, contrary to the public interest to do so.

14. I consider the factor favouring disclosure as set out in section 11B(3) of the FOI Act to promote the objects of this Act (including all the matters set out in sections 3 and 3A);

15. 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).

16. 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:

- a. prejudice the protection of an individual's right to privacy;
- b. prejudice the management function of an agency; and
- c. prejudice the personnel management function of an agency.

17. It is in the public interest that Defence efficiently and productively operates, with regard for the health and wellbeing of its personnel. As discussed above, the release of the phone numbers of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate interactions 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.

18. Accordingly, I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and, on balance, it is not in the public interest to release this information. It is, therefore, exempt under section 47E(d) of the FOI Act.

Further Information

19. The pack is as it was as at 13 February 2023. While the header to the 'Military Prosecutions' brief has a 'Last updated' date of 14 February 2023, that reflects the auto-saved date for the file. Aside from that date, no text had changed from 13 February 2023 when cleared by the Associate Secretary.

20. There were no back pocket briefs, hence there is no index.

21. There are two publically available attachments to the brief as outlined below:

- Three pages of the Proof Committee Hansard from 9 November 2022. The cover page and 69 and 70 of the transcript at the following link: [2022-23 Budget estimates \(November\) – Parliament of Australia \(aph.gov.au\)](#)
- Portfolio Question Number 36 asked by Senator David Shoebridge to Defence Portfolio. The broad Topic identified as 'Chaplains, spiritual welfare officers and counsellors' that can be found at the following link: [Senate estimates – Parliament of Australia \(aph.gov.au\)](#)



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Accredited Decision Maker
Associate Secretary Group