



DEFENCE FOI 471/22/23 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):

Seeking copies of all staff emails, correspondence and/or orders sent by Chief of Defence Force, Secretary of Dept of Defence, Chief of Army, and Deputy Chief of Army regarding direction and updates specific to the COVID pandemic.

For example, the CDF and Secretary would jointly send updates/direction on the COVID situation and expectations of service members. CA would do similar; these would be done by distribution lists on the DRN.

*Request timeframe: from date
01/03/2020 - 12:00am*

*Request timeframe: to date
18/01/2023 - 12:00am*

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 60 documents (246 pages) 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. The Department of Defence (Defence) has only considered final versions of documents.

Decision

5. I have decided to:

- a. release 33 documents in full;
- b. partially release 27 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] of the FOI Act; and
- c. remove irrelevant information under section 22 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 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.’

9. Paragraph 6.123 of the Guidelines provides further 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.

10. I have identified that the documents contain the names of Defence staff that are not publicly available nor would they be reasonably known to you.

11. In the case of *ABK v Commonwealth Ombudsman* [2022] AICmr 44, the Information Commissioner (IC) found that where the direct email addresses 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.

12. I am satisfied that should the contact details of Defence personnel be 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 effects the health, wellbeing and work of Defence personnel. Disclosure of family names and email addresses could therefore reasonably be expected to prejudice the operations of Defence.

13. Accordingly, I am satisfied that the contact details of all staff contained within the documents are exempt under section 47E(d) of the FOI Act.

Public interest considerations – section 47E(d)

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

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.

15. In favour of disclosure, I have considered the factors set out in section 11B(3) of the FOI Act, and consider that the release of the material would promote the objects of the FOI Act by providing access to government held information.

16. 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).

17. Against disclosure, 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. the management function of an agency; and
- d. the personnel management function of an agency.

18. I have not considered any of the irrelevant factors listed in section 11B(4) of the FOI Act when making this decision.

19. Taking all of this into consideration, I am satisfied that, on balance, the public interest factors against disclosure outweigh the factors for disclosure and the relevant information in the documents is exempt under section 47E(d) of the FOI Act.

lisa [redacted] Digitally signed by lisa [redacted]
Date: 2023.03.14 15:15:51
+11'00'

Lisa [redacted]
Accredited Decision Maker
[redacted]