



Australian Government

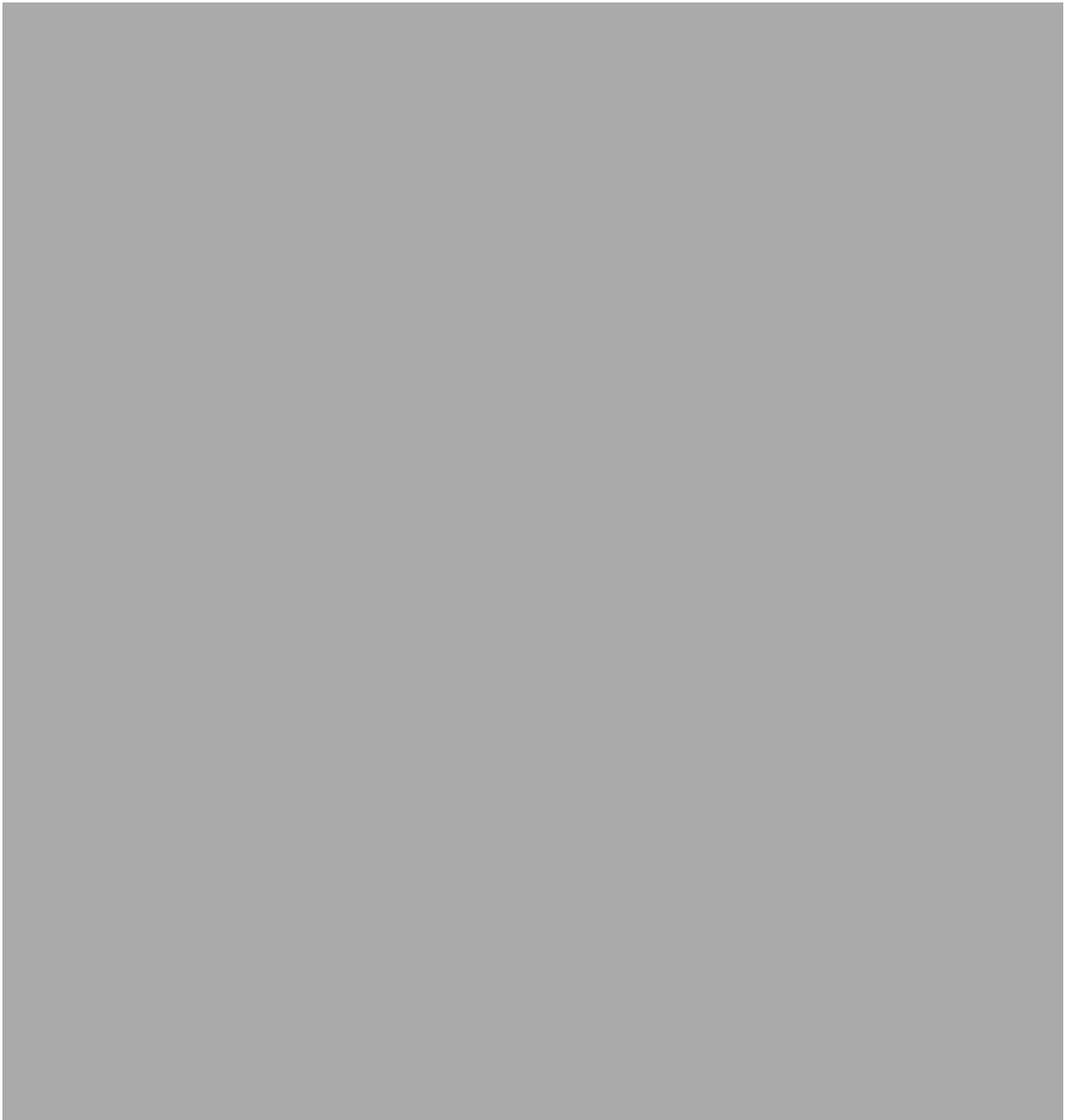
Defence

DEFENCE FOI 357/22/23 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:

“Briefs in relation to operational military training provided or proposed by the Australian Defence Force to Koppassus, Indonesia between 2002 and 2007”.

Background of request





FOI decision maker

9. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

10. I identified three (3) documents as matching the description of the request.
11. The decision in relation to each document is detailed in a schedule of documents.
12. I have added an FOI reference number and document number to each of the documents, which corresponds with the schedule.

Exclusions

13. 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

14. I have decided to:
 - a. partially release three (3) 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 sections 33(a)(iii) [documents affecting national security, defence or international relations] and 47E(d) [public interest conditional exemptions – certain operations of agencies] of the FOI Act; and
 - b. remove irrelevant material under section 22 of the FOI Act.

Material taken into account

15. 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 22 – Access to edited copies with exempt or irrelevant matter deleted

16. 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.
17. The documents contain material and a mobile telephone number that does not relate to the request.
18. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents to you in an edited form.

Section 33 – Documents affecting national security, defence or international relations

19. Section 33(a)(iii) 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:

...

(iii) the international relations of the Commonwealth

20. In regards to the terms 'would or 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.

5.36 The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

5.37 ... The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.

21. Additionally, the Guidelines state:

5.38 For example, the disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future.

22. Upon examination of the documents, I identified information which could reasonably be expected to damage international relations. The information, if released, could damage bilateral relationships and consequently national security if revealed to the public.

23. Based on the above considerations, I find the specified material to be exempt under section 33(a)(iii) of the FOI Act.

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

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

25. 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.

26. The Guidelines provide:

5.20 The term 'substantial adverse effect' broadly means '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'.

27. 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.

28. 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 customers 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.

29. 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.

30. 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 below.

31. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors are that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource.

32. However, disclosure of this information would not increase public participation in the Government processes (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussions of Government activities (section 3(2)(b) of the FOI Act).




33. 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:

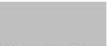
- the interests of an individual or group of individuals; and
- the personnel management function of an agency.

34. It is for those reasons that I find that the public interest factors against disclosure

outweigh the factors for disclosure and I deem the information exempt under section 47E(d) of the FOI Act.

35. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

Emily  Digitally signed
by Emily 
 Date: 2023.03.28
17:42:30 +11'00'

Emily 
Accredited Decision Maker
Strategy, Policy, and Industry Group