



DEFENCE FOI 545/22/23 STATEMENT OF REASONS UNDER SECTION 55G OF THE FREEDOM OF INFORMATION ACT

1. I refer to the request by [REDACTED] (the applicant), for access to the following documents under the Freedom of Information Act 1982 (Cth) (FOI Act):

...any statutory, Court, Tribunal, policy or other definitions relied on by the Department of Defence (or Army, Navy or Air Force) of the words “in action” applicable to the Letters Patent dated 15 January 1991 and up to and including the 13 December 2011; and

any statutory, Court, Tribunal, policy or other definitions relied on by the Department of Defence (or Army, Navy or Air Force) of the words “in warlike operations” applicable to the Letters Patent dated 13 December 2011.

NB. 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 to or from the applicant are excluded from this request.

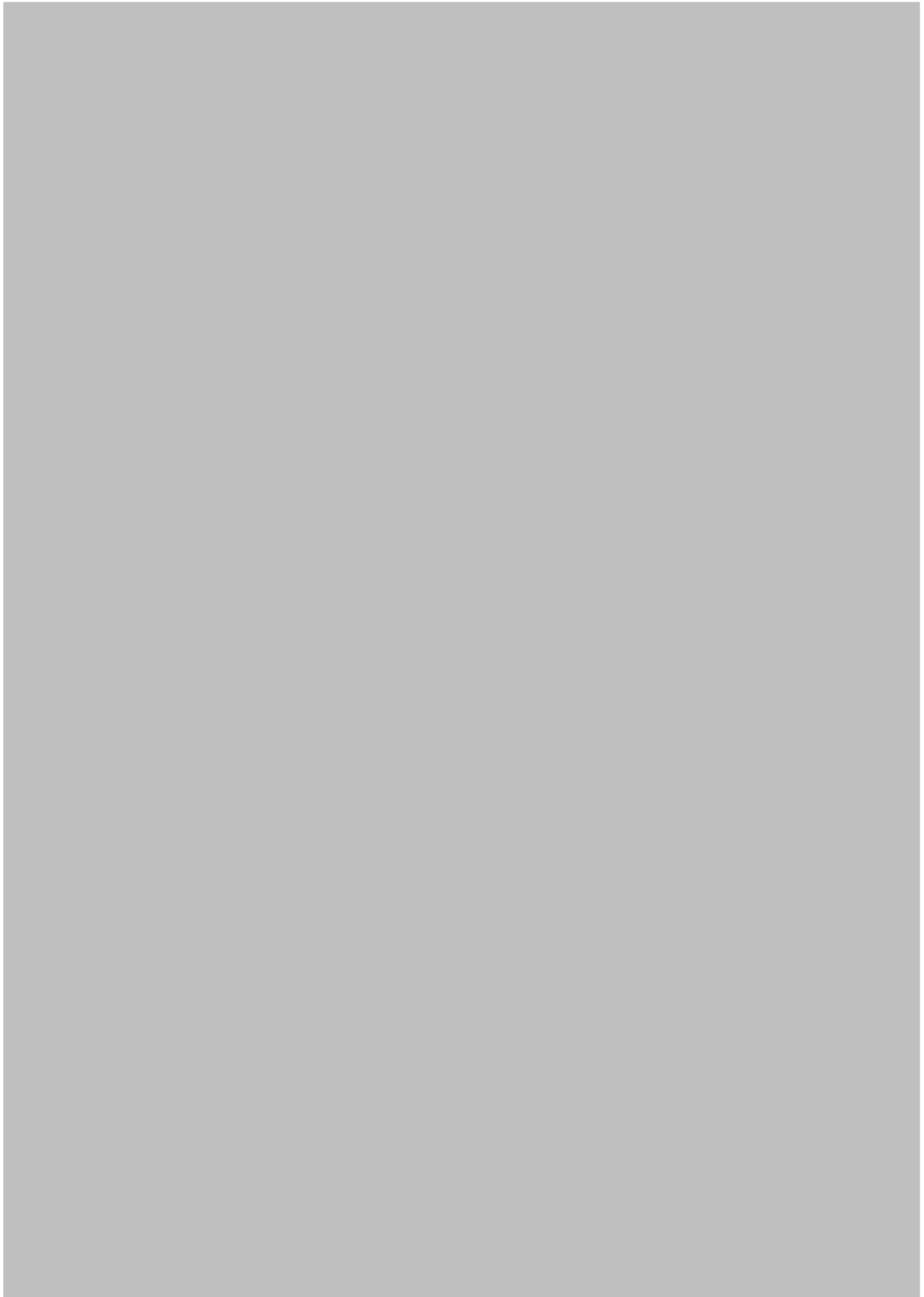
Request timeframe: from date

01/01/2007 - 12:00am

Request timeframe: to date

30/06/2012 - 12:00am





FOI review officer

10. I am authorised to make this varied decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

Documents identified

11. I identified five (5) documents as matching the description of the request.
12. The decision in relation to each document is detailed in the schedule of documents.
13. I have added an FOI reference number and document number which corresponds with the schedule.

Exclusions

14. 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

15. I have decided to partially release the five (5) 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 – operations of agency] of the FOI Act.
16. Two additional documents relevant to the request are publicly available at the following links:
 - <https://webarchive.nla.gov.au/awa/20200605110750/https://www.defence.gov.au/Medals/Policy/Honours-Awards-Manual.asp>; and
 - <https://www.defence.gov.au/sites/default/files/2020-08/review-honours-awards-commendation-policies-feb-08.pdf>
17. As the documents are publicly available, I have not considered access as part of my decision.

Material taken into account

18. 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;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. advice received from subject matter experts within the Defence Honours and Awards Directorate and the Office of the Chief of the Defence Force.

REASONS FOR DECISION

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

19. 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.

20. I have identified irrelevant material in the documents that do not relate to the request. I am satisfied that it is reasonably practicable to remove the irrelevant material and release the documents to you in an edited form.

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

21. 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:

...

(c) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

22. 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.

23. Against the above criteria, I found disclosure of the information may reasonably impact upon the ability of Defence to effectively undertake its activities. Furthermore, disclosure of this information would not add public interest value to the scope of this request.

24. In the case of *'ABK' and Commonwealth Ombudsman [2022]* AICmr 44, the Information Commissioner (IC) found that where the direct names, email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to reasonable expectation that the release of 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.

25. If the contact details of Defence personnel were to 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 affects the health, wellbeing and work of Defence personnel. Disclosure of names, email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.

26. Accordingly, I am satisfied that the relevant information contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations - Section 47E(d)

27. 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.

28. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

- a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A).*

29. In my view, 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).

30. 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 protection of an individual's right to privacy.

31. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. As I have established above, the release of the names 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 liaison with the public. The direct contact details of Defence personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.

32. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.

33. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under section 47E(d) of the FOI Act.

Further Information

34. 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.

35. As outlined above in paragraph sixteen (16), I am satisfied that part of the relevant information is available by accessing the National Library of Australia's 'Trove' database.

36. Specifically, the DHAM provides a policy definition applicable to in-action and warlike. The definition of warlike operations can be found within Chapter 8 which outlines the Governor-General declaration for operations to be warlike (for medallic recognition purposes) under the Australian Active Service Medal Regulations, see paragraph 8.3. The definition of in-action can be found within Chapter 7 which describes the Australian Gallantry Decorations, see paragraph 7.3.s

Shan

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Date: 2023.08.09

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Shan

Assistant Director- FOI Review
Accredited Decision Maker
Department of Defence