



DEFENCE FOI 043/23/24

STATEMENT OF REASONS UNDER THE *FREEDOM OF INFORMATION ACT 1982*

1. I refer to the request by [REDACTED] (the applicant), dated and received on 14 July 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

Item 1: *All costs / invoices associated with a television news broadcast on 13th of July, 2023 onboard HMAS Sydney by Network Ten / Ten News First, inclusive of any payments made to Network Ten related to the broadcast.*

Item 2: *All communication between Network Ten and Defence related to the 13th of July, 2023 television broadcast on Ten News First.*

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 have identified four (4) documents as falling within Item 2 of 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. refuse access to Item 1 of the request under section 24A [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
- b. partially release four (4) documents under Item 2 of the request 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 47E(d) [public interest conditional exemptions – certain operations of agencies] of the FOI Act and 47F [public interest conditional exemptions – personal privacy] of the FOI Act; and
- c. remove irrelevant material in accordance with section 22 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;

- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
- e. responses received as part of the third-party consultation.

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. The documents contain exempt material and material that does not relate to the scope of the request.

9. 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 24A - Requests may be refused if documents cannot be found, do not exist or have not been received

10. Section 24A(1) of the FOI Act states:

Document lost or non-existent

(1) An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document; and

(b) the agency or Minister is satisfied that the document:

(i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

11. Paragraph 3.94 of the Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(1):

...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...

12. I note that this media activity was not a commercial arrangement and, therefore, no records relating to financial or in-kind transactions exist.

13. Accordingly, I am satisfied that all reasonable steps have been taken to locate the documents sought by the applicant for Item 1 of the scope of the request. I am satisfied that the documents do not exist, and refuse Item 1 of the request under section 24A(1) of the FOI Act.

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

14. 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.*

15. 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.

16. In the case of 'ABK' and *Commonwealth Ombudsman* [2022] AICmr 44, the Information Commissioner (IC) found that where the direct contact details of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to a 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.

17. I am satisfied that were the contact details of Defence personnel 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 staff names, phone numbers and email addresses through this FOI request, therefore, could reasonably be expected to prejudice the operations of Defence.

18. The Guidelines provide, at paragraph 6.120, that I should consider whether disclosure of the information 'would, or could reasonably be expected to lead to 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 this information could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.

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

Section 47F – Public interest conditional exemptions - personal privacy

20. Section 47F(1) of the FOI Act states:

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).

21. The FOI Act shares the same definition of 'personal information' as the Privacy Act 1988 (Cth). Furthermore, 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.*

22. I found that the documents contain personal information of third parties. This includes names, mobile numbers and email addresses, which would reasonably identify the third parties.

23. In my assessment of whether the disclosure of this personal information is unreasonable, I considered the following factors in accordance with section 47F(2) of the FOI Act:

- 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 document;
- c. the availability of the information from publicly accessible sources; and
- d. the effect the release of the personal information could reasonably have on the third party.

24. I found that the specific information listed is not well known and the information is not readily available from publicly accessible sources. Through third-party consultation, the individuals contested the release of their personal information and the effect that the release of that relevant information would have.

25. Accordingly, I am satisfied that the specified personal information in the documents is conditionally exempt under section 47F of the FOI Act.

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

26. 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.

27. 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);*
- (b) *inform debate on a matter of public importance;*
- (c) *promote effective oversight of public expenditure.*

28. 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).

29. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors that I find particularly relevant to this request are that the release of this information could reasonably be expected to prejudice:

- the protection of an individual's right to privacy;
- the interests of an individual or a group of individuals;
- an agency's ability to obtain confidential information;
- an agency's ability to obtain similar information in the future; and
- the personnel management function of an agency.

30. 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 contact details 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.

31. Additionally, Defence has an obligation to protect third-party information that it receives in the usual course of conducting its operations. In this case, third parties have objected to their information being released through FOI and I do not see any reason to release this third-party personal information, nor any public interest in Defence disclosing this information against the wishes of those third parties.

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, that 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 relevant information is exempt under sections 47E(d) and 47F of the FOI Act.

steven [redacted] Digitally signed by
steven [redacted]
Date: 2023.08.17 09:33:14
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Steven [redacted]
Accredited Decision Maker
Associate Secretary Group