



## DEFENCE FOI 533/22/23 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the request by an anonymous applicant, dated and received on 24 February 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

### *Category 1:*

*Copies of the letter or letters from Angus Campbell dated on or about 2 November 2022 sent to current or former members of SOCOMD (including but not limited to the Special Air Service Regiment or 1 or 2 Commando Regiment) in relation to the award and/or return of medals.*

*Any drafts of the Letter, whether or not written by Angus Campbell, whether hard copy or electronic.*

### *Category 2:*

*The dates between 1 January 2010 and 1 January 2013 that Angus Campbell was in Iraq or Afghanistan.*

### *Category 3:*

*Summaries, reports, briefings or similar documents related to psychological screenings (e.g. "Return to Australia" screenings) and any anonymised data, trends, surveys or feedback forms relating to the same, limited to Australian Army deployments to Afghanistan during 2010, 2011 and 2012.*

### *Category 4:*

*The Inquiry Officer inquiry report: matter concerning Joint Operations Command (also referred to as Inquiry Officer Report into Green on Blue attacks in 2011), dated 27 July 2012. Referred to here:*

*[\[https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F2071881%22\]](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F2071881%22)*

### *Category 5*

*Any communications whether electronic or hardcopy, including emails, memos, reports, notes or briefings, received by Angus Campbell from 2010 to 2012 regarding green on blue attacks.*

### *Category 6*

*Any documents nominating or recommending Angus Campbell for the award of the Distinguished Service Cross (Award ID 1146295) and any documents discussing or commenting on that nomination or recommendation by persons involved in the nomination or recommendation process.*

## **Background**

2. On 21 March 2023, with the applicant's written agreement, Defence extended the period for dealing with the request from 26 March 2023 until 25 April 2023 in accordance with section 15AA [extension of time with agreement] of the FOI Act.

## **FOI decision maker**

3. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request. This decision is in relation to Categories 2 to 6 of the FOI request.

## **Documents identified**

4. I have identified eleven (11) documents as matching the description of Category 6 of the request.

5. One (1) document has been created in accordance with section 17(1)(c) of the FOI Act to satisfy Category 2 of the request. The document was created on the basis that:

- a. a written document can be produced containing the requested information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information; and
- b. producing the written document did not substantially and unreasonably divert resources of the agency from its other operations (section 17(2)).

6. The decision in relation to each document is detailed in the schedule of documents.

7. I have added an FOI reference number and document number to the documents, which corresponds with the schedule.

## **Exclusions**

8. 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**

9. I have decided to:

- a. release one (1) document in full created under section 17 of the FOI Act;
- b. partially release ten (10) 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 redacted material is considered exempt under section 33 [documents affecting national security, defence or international relations] and 47E [public interest conditional exemptions - operations of agency] of the FOI Act.
- c. refuse access to Category 4 under section 38 [documents to which secrecy provisions of enactment apply] of the FOI Act;
- d. refuse part of the request (Categories 3 and 5) under section 24A(1) [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
- e. remove irrelevant material in accordance with section 22 of the FOI Act.

## **Material taken into account**

10. 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 by subject matter experts within Headquarters Joint Operations Command (HQJOC), Defence People Group, Joint Health Command (JHC), Afghanistan Inquiry Response Task Force (AIRTf), the Office of the Chief of Defence Force (OCDF) and Strategic Policy and Industry Group (SP&I).

## **Reasons for decision**

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

11. 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.

12. 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**

13. 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.*

14. Paragraph 3.90 of the Guidelines advise the kind of detail this statement of reasons could include to refuse a request under section 24A(1):

*... the steps that were taken to search for the document, including the dates as to when the searches were conducted, the search parameters used...*

15. To ensure that “all reasonable steps” have been taken in this request, every reasonable avenue of locating potential documents within the scope of this request have been exhausted.

16. HQJOC conducted extensive searches using search terms in relation to documents ‘received by Angus Campbell from 2010 to 2012 regarding green on blue attacks’ and advised that no documents were found. Searches were conducted from 1 January 2010 to 31 December 2012.

17. Further, JHC conducted extensive searches using search terms in relation to ‘psychological screenings (e.g “Return to Australia” screenings)’ and advised that no documents were found. Searches were conducted from 1 January 2010 to 31 December 2012.

18. Based on the above, I am satisfied that “all reasonable steps” have been taken to locate the documents sought by the applicant for Categories 3 and 5 of the request. I am satisfied that the documents do not exist or cannot be found, and refuse access to these parts of the request under section 24A(l) of the FOI Act.

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

19. Section 33(a) of the FOI Act exempts a document if its disclosure under the Act would, or could reasonably be expected to, cause damage to:

(i) *the security of the Commonwealth;*

...

(iii) *the international relations of the Commonwealth.*

20. Upon examination of the documents, I formed the view that disclosure of the information would, or could reasonably be expected to damage the security and international relations of the Commonwealth.

21. In relation to subsection 33(a)(i), the Guidelines state:

*Security of the Commonwealth*

*5.29 The term ‘security of the Commonwealth’ broadly refers to:*

*(a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests.*

*5.30 A decision maker must be satisfied that disclosure of the information under consideration would, or could reasonably be expected to, cause damage to the security of the Commonwealth.*

22. In relation to subsection 33(a)(iii), the Guidelines state:

*International relations*

*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...*

*5.37 The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible or speculative damage, such as loss of trust and confidence in the Australian Government or one of its agencies. 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.*

23. The Guidelines, at paragraph 5.16, provide that the term ‘reasonably expected’ requires consideration of the likelihood of the predicted or forecast damage. In particular, at paragraph 5.27, the Guidelines indicate that there must be ‘real’ and ‘substantial’ grounds for expecting

the damage to occur, which can be supported by evidence or reasoning. A mere allegation or possibility of damage will be insufficient for the purposes of the exemption.

24. Having considered the Guidelines in relation to the identified documents, I have formed the view that, disclosure of the relevant information in the documents would, or could reasonably be expected to, cause damage.

25. I identified material in the documents which, upon release, could reasonably be expected to cause damage to the security of the Commonwealth by making public, information relating to defence operations that are classified. The exempt material contains sensitive information about deployments that could potentially allow bad actors with hostile intentions to exploit the Australian Defence Force (ADF) as well as other international forces involved.

26. In addition to the above, by divulging the identified information, if combined with other pieces of information available to the public generally, including capabilities, techniques, tactics and procedures put in place to serve Australia's Defence personnel deployment activities, could generate a composite that would prejudice the effectiveness of those activities.

27. The documents also contain information relating to Australia's relationship with foreign governments. Release of this information could reasonably be expected to cause damage to those relationships. Any damage to international confidence and close relationships with other countries would seriously affect Defence's ability to deliver on its obligations to protect Australia's interests and government and foreign officials may be less willing to engage with Australian government officials and Australian businesses in the future.

28. Based on my consideration of the above, I am of the view that release of the relevant information in the documents could reasonably be expected to cause damage to the national security, defence and international relations of the Commonwealth.

29. It is for these reasons I have decided that the relevant information in the documents is exempt under sections 33(a)(i) and 33(a)(iii) of the FOI Act.

### **Section 38(1) – Documents to which secrecy provisions of enactments apply**

30. Section 38(1) of the FOI Act states:

*(1) Subject to subsection (1A), a document is an exempt document if:*

*(a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and*

*(b) either:*

*(i) that provision is specified in Schedule 3; or*

*(ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that enactment or law or any other enactment....*

*(2) Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.*

31. Schedule 3 of the FOI Act identifies the secrecy provisions applicable to section 38, which states, in part:

*Schedule 3 – Secrecy provisions*

*Defence (Inquiry) Regulations, subregulation 63(2)... [1985 Regulations].*

32. I identified documents which contain information from an Inquiry Officer's Inquiry appointed pursuant to the *Defence (Inquiry) Regulations 2018* (the Regulations), and it is appropriate to consider what effect this may have on the release of these documents under the FOI Act.

33. Section 79(2) of the Regulations prescribes the continued application of regulation 63 of the 1985 Regulations. Section 79(3) of the Regulations applies the protection of section 38 of the FOI Act to inquiry information protected by the 1985 Regulations.

34. Sub-regulation 71 of the Regulations expressly applies section 38 of the FOI Act to Inquiry Officer Inquiry records and Court of Inquiry reports.

35. Accordingly, I am satisfied the documents in relation to Category 4 are exempt under section 38 of the FOI Act.

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

36. Section 47E(c) 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 management or assessment of personnel by the Commonwealth or by an agency...*

37. The Guidelines provide, at paragraph 6.113, that:

*Where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely, that:*

- *an effect would reasonably be expected following disclosure*
- *the expected effect would be both substantial and adverse.*

38. I find that the information contained in the documents relates to the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety.

39. Releasing the information involved in the decision making process for recognition, and information that relates to how the decision was conducted and who conducted the decision could reasonably be expected to have a substantial adverse effect on Defence's management. Maintaining the integrity of the Honours and Awards nomination process is paramount. Releasing details about the considerations of individuals and what is taken into account could adversely affect Defence's ability and integrity with respect to protecting the confidentiality of these processes, thus affecting the proper and efficient conduct of the operations of Defence and its Honours and Awards process.

40. Additionally, the documents contain information related to frank and candid comments from Defence staff regarding the actions of personnel with an expectation of it being provided in confidence. If released, it could reasonably be expected to prejudice the participation of personnel to provide such frank and candid comments which could reasonably impact the decision making processes in future.



41. It is vital that Defence has the ability to manage its personnel and values. This ability plays an important part in operational requirements whereby Defence manages personnel issues and undertakes appropriate disciplinary action. The inability of Defence to handle these matters would unfairly affect those personnel subject to allegations and deny them procedural fairness.

42. The disclosure of this information would result in the reluctance of employees or agencies to provide honest information and a loss of trust. The level and quality of information gathered in the future would be significantly diminished.

43. Accordingly, I am satisfied that the relevant information is conditionally exempt under section 47E(c) of the FOI Act.

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

44. 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.*

45. 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.*

46. 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.

47. 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.

48. 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 – sections 47E(c) and 47E(d)**

49. 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.*

50. 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.*

51. 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 a group of individuals;
- an agency's ability to obtain confidential information;
- an agency's ability to obtain similar information in the future;
- the management function of an agency; and
- the personnel management function of an agency.

52. While I accept there is a public interest in ensuring that Defence undertakes operations within the agency in a fair and proper manner, it would, on balance, be contrary to the public interest to breach the confidentiality of those involved in processes within Defence, as future requests for information may be impeded.

53. There is also a strong public interest in Defence maintaining the Commonwealth's good internal working relationships with its stakeholders, and not releasing information that would harm the effectiveness in obtaining that information. Disclosure of this information would have a substantial adverse effect on the proper and efficient conduct of the operations of Defence and the management of its personnel and would not, in my view, be in the public interest.

54. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the relevant information within the documents. I have, therefore, decided that it would be contrary to the public interest to release the information considered exempt, under sections 47E(c) and 47E(d) of the FOI Act.

55. In coming to the above decision, I have not taken the factors outlined in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.

### **Further Information**

56. 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.

57. A separate decision will be provided to address Category 1 of the request.

**Petrina**



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**Petrina**

Accredited Decision Maker  
Defence People Group  
Department of Defence