



DEFENCE FOI 385/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 28 October 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):
 1. *Email correspondence related to the drafting of the Defence media statement found at the following link:*
<https://web.archive.org/web/20110603011237/https://www.defence.gov.au/media/DepartmentalTpl.cfm?CurrentId=11738>
(date range: 28 April 2011 - 29 April 2011)
 2. *Emails sent to and from public affairs officers, civil-military affairs officers and other personnel within JTF633 in relation to the killing of [REDACTED]*
(date range: 28 April 2011 - 4 May 2011)
 3. *JTF633 commander's update briefs and email correspondence between JTF633 public affairs officers and Angus Campbell for the following date ranges:*
 - a. 27 April 2011 - 5 May 2011
 - b. 25 August 2011 - 5 September 2011.

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 six (6) documents as falling within the scope of Item 2 of the request.
4. I identified no documents as falling within the scope of Item 1 and 3 of the request.
5. The decision in relation to each document of Item 2 is detailed in the schedule of documents.

Exclusions

6. Personal email addresses, signatures 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

7. I have decided to:
 - a. release one (1) document in full;

- b. partially release 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) of the FOI Act;
- c. refuse Item 1 and 3 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
- d. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

8. 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. consultation with Headquarters Joint Operations Command and the Afghanistan Inquiry Response Task Force.

REASONS FOR DECISION

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

9. 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.
10. Five documents contain exempt and, in the case of three documents, irrelevant material. 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

11. Section 24A(1) of the FOI Act states:
- (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.*
12. 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 to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...

13. To ensure that all reasonable steps have been taken in relation to this request, every reasonable avenue of locating potential documents have been exhausted.
14. Personnel from Defence Media, Office of the Chief of the Defence Force, Headquarters Joint Operations Command and Afghanistan Inquiry Response Task Force searched for documents using search terms such as "Killing", [REDACTED], "Weekly Summary", "Commander's Update", "Angus Campbell" and "ACOMD-A" within the date ranges specified in the request. No records were found matching the scope of Items 1 and 3 of the applicant's request.
15. I am satisfied that all reasonable steps have been taken to locate the documents sought by the applicant. I am satisfied that the documents cannot be found or do not exist, and refuse Item 1 and 3 of the request under section 24A(1) of the FOI Act.

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

16. 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.*

17. 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.

18. In the case of 'ABK' and *Commonwealth Ombudsman* [2022] AICmr 44, the Information Commissioner (IC) found that where the direct 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.
19. 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 names, email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.
20. 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 the information could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.

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

Public interest considerations - section 47E(d)

22. 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.

23. 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;*
- (d) allow a person to access his or her own personal information.*

24. 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).

25. 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; and
- the management function of an agency.

26. 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, email addresses and phone numbers 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.

27. 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.

28. 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

29. The documents matching the scope of this request contained a dissemination limiting marker (DLM). The DLM is struck through when documents are approved for public release.

Jason [REDACTED] Digitally signed
by Jason [REDACTED]
[REDACTED] Date: 2023.11.30
14:13:47 +11'00'

Jason [REDACTED]

Accredited Decision Maker

ADF Headquarters

Department of Defence