



## DEFENCE FOI 772/23/24

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

1. I refer to the request by [REDACTED] (the applicant), dated and received on 21 March 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*“any and all documents that show, how and when, Form AE993 was developed and put into use.”*



#### 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.

#### Documents identified

4. A document was created under section 17 of the FOI Act in line with the information requested:
  - *A document was produced containing the information by using a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information s17(1)(i), and*
  - *Producing the document did not substantially and unreasonably divert resources of the agency from its other operations s17(2).*

#### Decision

5. I have decided to:
  - a. partially release one document 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(c) [public interest conditional exemptions - certain operations of agencies] 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);

- e. consultation with Headquarters Forces Command.

## REASONS FOR DECISION

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

7. 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*

8. 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.*

9. I find that the material specified relates to the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety.
10. The relevant documents contain names and positions of Defence personnel. The names and contact details of Defence personnel within the requested documents are not publicly available and disclosure of these would, or could reasonably be expected to, have a substantial adverse effect on the health and wellbeing of these individuals. In order to ensure these staff maintain their right to be safe at work and safe from harm as a result of their work, their names and details are not freely provided.
11. With respect to staff names, I am satisfied that if these details of Defence personnel are made publicly available, it would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel. 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 could therefore reasonably be expected to prejudice the management of personnel as the applicant, with their prior knowledge of Defence, could contact these personnel directly.
12. Further, the FOI Act does not control or restrict any subsequent use of dissemination of information released under the Act. As such, consideration must be given to whether release of names of personnel that are not currently available in the public domain could have a substantial and adverse impact on these individuals. I consider that the disclosure of this information could cause occupational health and safety concerns if the individuals were contacted by the applicant directly. This would, or could reasonably be expected to, substantially and adversely impact the agency's ability to manage its personnel.
13. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(c) of the FOI Act.

## Public interest considerations - section 47E(c)

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.*

a. 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.*

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

31. 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.

32. 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(c) of the FOI Act.

## FURTHER INFORMATION

33. Headquarters Forces Command conducted a search of its records and could not locate any correspondence that specifically addressed how form AE993 was developed and put into use.

Joanne

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Date: 2024.04.26 09:45:17 +10'00'

Mrs Joanne

Accredited Decision Maker

Army Headquarters

Department of Defence