



DEFENCE FOI 660/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 5 February 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

All records [up to 5 February 2024] provided to the Minister for Defence, the Chief of the Defence Force, the Chief of Army, the Secretary of the Department of Defence, the Chief of Personnel and/or the Commander, 1st Division, Australian Army, that relate to the appointment of Colonel Penioni (Ben) Naliva of the Republic of Fiji Military Forces as Deputy Commander of the Australian Army's 7th Brigade.

I do not seek access to duplicates of any document captured within the scope of the request. Where a document exists in more than one draft, I seek access to the final version or most recent draft. In cases in which a document contains any substantive reference to Colonel Naliva, I seek access to the entirety of the document subject to possible redactions referred to below.

I do NOT seek access to duplicates of any document captured within the scope of the request; nor the mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent.

Background

2. On 28 February 2024, with the applicant's written agreement, Defence extended the period for dealing with the request from 6 March 2024 until 20 March 2024, 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.

Documents identified

4. I have identified three documents falling within the scope of the request.

Exclusions

5. Signatures and mobile telephone numbers contained in documents that fall within the scope of the FOI request and duplicates of documents, are excluded from this request. Defence has only considered final draft versions of documents.

Decision

6. I have decided to:
 - a. partially release three (3) 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 sections s33(a)(iii) [Documents affecting national security, defence or international relations], s47E [Public interest

conditional exemptions – certain operations of agencies] and s47F [Public interest conditional exemptions—personal privacy] of the FOI Act; and

- b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

- 7. 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; and
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

REASONS FOR DECISION

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

- 8. 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.
- 9. Three documents contain exempt material and information that does not relate to the request. However, I am satisfied that it is reasonably practicable to remove that exempt and irrelevant material and release the documents to you in an edited form.
- 10. Additionally, where a decision maker denies access to a document, section 22(1) of the FOI Act requires that they consider releasing the document with exempt matter deleted, if possible.
- 11. Paragraph 3.98 of the Guidelines provides that:

...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.
- 12. I have considered disclosing one document to you with deletions, but have decided to refuse access as it would be meaningless and of little or no value once the exempt material is removed.

Section 33(a) – Documents affecting national security, defence or international relations

- 13. Section 33(a)(iii) of the FOI Act states:

A document is an exempt document if disclosure of the document under this Act:

- (a) *would, or could reasonably be expected to, cause damage to:*

...

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

14. In regard to the terms ‘would, or could reasonably be expected to’ and ‘damage’, the Guidelines provide:

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

...

[Damages]

5.37 ... The expectation of damages 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.

15. Additionally, the Guidelines provide:

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. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

16. I find that disclosure of the specified information could reasonably be expected to cause damage to the international relations of the Commonwealth. The documents contain material that would reveal sensitive information about bilateral relationships with foreign counterparts and defence priorities. The release of such information could harm Australia’s international standing and reputation. It could reasonably be expected to limit the Commonwealth’s ability to deal with those countries in relation to similar matters in the future. If divulged, I find that the relevant information would cause a loss of trust and confidence such that foreign officials would be less willing to engage with the Australian Government. Accordingly, the disclosure of such information could impact Australia’s good working relations with those foreign governments as well as inhibit the flow of confidential information.

17. Accordingly, I am satisfied that the information is exempt under section 33(a)(iii) of the FOI Act.

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

18. 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.*

19. 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.

20. 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.
21. I am satisfied that were the contact details and locations 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 contact details and biographical data could, therefore, reasonably be expected to prejudice the operations of Defence.
22. 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 contact details within the documents are not publicly available and that more appropriate communication channels are 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.
23. Accordingly, I am satisfied that the relevant material contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

24. 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).
25. The FOI Act shares the same definition of ‘personal information’ as the Privacy Act 1988 (Cth). 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.*
26. I found that the information contains personal information of other person/s. This includes their personal contact information, career history, family details, and qualifications, which would reasonably identify a third party/parties.
27. In my assessment of whether the disclosure of personal information is unreasonable, I considered the following factors in accordance with section 47F(2):
 - 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; and
 - c. the availability of the information from publicly accessible sources.
- 28. I found that the specific personal information listed is not well known, individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the document and the information is not readily available from publicly accessible sources.
- 29. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

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

- 30. 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.

- 31. 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.*
- 32. 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).
- 33. 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;
 - 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.
- 34. 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 and biographical details of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Further, release of this information will impact Defence's ability to obtain similar information in the future. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details and biographical

information of Defence personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.

35. Additionally, Defence has an obligation to protect any personal information of third parties that it holds, for which I find the public interest in protecting this information far outweighs the public interest in its release. As a result, I have formed the view that the public have a reasonable expectation that personal information of third parties would not be released, as it would adversely affect the personal privacy of those individuals.
36. I am satisfied, based on the above particulars, that the public interest factors against disclosure outweigh the factors for disclosure, and, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under sections 47E and 47F of the FOI Act.
37. 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.

FURTHER INFORMATION

38. 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.

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Date: 2024.06.06 19:44:43 +10'00'

BRIG Joanne [redacted]
Accredited Decision Maker
Strategy, Policy and Industry Group
Department of Defence