



DEFENCE FOI 173/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 2 September 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

The advice provided to the Governor-General to award the Army Battle Honour Eastern Shah Wali Kot;

The full citations (not the abbreviated citations published on the Department of Prime Minister and Cabinet website) of each of the honours awarded to ADF personnel for participation in the 2010 battle of Shah Wali Kot.

The request does not cover the names, addresses or phone numbers of any individuals.

Background

2. On 19 September 2024, with the applicant's written agreement, Defence extended the period for dealing with the request from 2 October 2024 until 1 November 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 ten (10) documents as falling within the scope of the request.
5. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

6. Signatures and PMKeyS numbers contained in documents that fall are excluded from this request. Defence has only considered final versions of documents.

Decision

7. I have decided to:
 - a. 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 deleted material is considered exempt under sections 33 [Documents affecting national security, defence or international relations], 47E [Public interest conditional exemptions – certain operations of agencies] and 47F [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

- 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; 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

- 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. The documents contain irrelevant material such as PMKeyS numbers, names and signatures that do not relate to the request.
- 11. 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 33 – Documents affecting national security, defence or international relations

- 12. Section 33 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:

- (i) the security of the Commonwealth*
- (ii) the defence of the Commonwealth*
- (iii) the international relations of the Commonwealth*

- 13. 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.

...

5.32 The meaning of ‘damage’ has three aspects:

- i. *that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. *the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. *the organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

14. In regard to 'security of the Commonwealth', the Guidelines provide at paragraph 5.30:

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*
- (b) the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations (see definition in s 4(5)).*

15. In regard to 'defence of the Commonwealth', the Guidelines, at paragraph 5.36, refer to previous Administrative Appeals Tribunal (AAT) decisions which provide that the term includes:

- a. meeting Australia's international obligations;
- b. ensuring the proper conduct of international defence relations;
- c. deterring and preventing foreign incursions into Australian territory; and
- d. protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.

16. In regard to 'international relations', the Guidelines provide at paragraph 5.39:

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.

17. I have identified material in the documents which upon release would, or could reasonably be expected to, cause damage to the security of the Commonwealth by making public, information relating to defence operations. The exempt material contains sensitive information related to deployments that would, or could reasonably be expected to, allow individuals to exploit the Australian Defence Force and other international forces.

18. Furthermore, I have identified material in the documents which upon release would, or could reasonably be expected to, cause damage to the defence of the Commonwealth. After consideration, I have determined that by divulging the identified material, with

concern for the potential to combine the information with publicly available doctrine related to Australian Defence Force capabilities, techniques, tactics and procedures, it could prejudice the effectiveness of those activities.

19. Accordingly, I am satisfied that the material in the documents is exempt under section 33 of the FOI Act.

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

20. Section 47E 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

21. In relation to section 47E(d) the Guidelines, at paragraph 6.115, 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.

22. Candour is necessary for the integrity of the honours and awards process. Individuals may be nominated by their peers, subordinates or superiors. Honours and awards nominations, inclusive of the written descriptions of the recognised actions and achievements, are made in confidence and are not available to the candidate during or after the process. As such, I am satisfied that if the information contained in the documents was made publicly available it would substantially affect the integrity of the protocols and procedures in place that protect the honours and awards process.

23. Accordingly, I am satisfied that the identified information is conditionally exempt under section 47E 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:

6.123 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 documents contain personal information about individuals that is not well known and is not publicly available.

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;
 - 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.
28. The release of the names, service histories and the operational achievements and actions of individuals identified in the documents could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of personal information of individuals other than the applicant would be an unreasonable disclosure of personal information.
29. Accordingly, I am satisfied that the identified information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E 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).


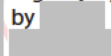
33. Paragraph 6.233 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:


- the protection of an individual's right to privacy;
- the interests of an individual or a group of individuals; and

- the management and personnel management function of an agency.
34. While I accept there is public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining confidentiality of the material contained within the documents, particularly those containing an opinion or advice. Additionally, nominations for honours and awards require candour and confidentiality to maintain the integrity of the process
35. 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.
36. 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 sections 47E and 47F of the FOI Act.

FURTHER INFORMATION

37. The names on the released documents have been redacted to the extent that only the recipient's rank, first initial and any post-nominal letters are shown. This reflects the manner in which these awards were publicly announced.

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by 
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Accredited Decision Maker
Defence People Group
Department of Defence