



Australian Government
Department of Defence

Reference: BN770497

FOI 146/18/19 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

"I request information on the following under the Freedom of Information Act:

- The Department's policy on gender neutral toilets*
- Rules and regulations regarding toilet use by different genders?*
- The number of toilets within the Department that have been turned into gender neutral toilets in the past financial year?*
- Any emails or documents prepared by the department regarding the toilet policy. "*

FOI Accredited Decision Maker

2. On 30 October 2018, I was appointed as the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified six documents which contained information connected with the description of the request. A schedule of documents, subject to the request, is provided at Enclosure 1.

Decision

4. I confirm that I have no personal stake in the decision to be made and have decided that the six documents that fall within the scope of being modified by deletions and they are to be partially released in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

Material taken into account

5. In making my decision, I had regard to:
- a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions in 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. the obligation to base each decision on facts under section 26(1)(a) of the FOI Act.

Reasons for decision

Section 22 Access to edited copies with exempt or irrelevant material deleted

6. The following provides you my Statement of Reasons in relation to whether documents are to be released in their entirety or in a redacted state. Edits specific to each document are outlined below.
7. **Item 1.** The guidelines *Understanding Transitioning Gender in the Workplace*, provide commanders and managers in Defence with the basis for a sensible and supportive approach to the management of Defence people, whether military or civilian, who intend to transition from one gender to another. This 17 page guide provides practical advice and clarification about how the law applies to the Australian Defence Force, to enable employers to respond fully and confidently to a range of specific issues that impact on trans people. Three paragraphs on page seven of the document relate to ablutions, with an additional sentence referencing this aspect of transitioning, on page 14, Annex B of the document. Item 1 has been edited by redacting the remainder of the guidelines that make no reference to Defence's policy on gender neutral toilets.
8. **Item 2.** The Royal Australian Navy Noting Brief *Gender Transition and the Implications for Shared Living and Accommodation*, was written as a formal response to the United States Navy request for information on Navy/Australian Defence Force policy on personnel undergoing gender transition and the implication on shared living and accommodation arrangements, notably on ships and shared barracks accommodation. Upon examination of Item 3, I identified information pertaining to unisex bathrooms captured on pages one and two of the document. Details pertaining to the Australian Defence Force policy on the underlying conditions and medical treatment options for transition personnel has been redacted, as it is assessed as irrelevant to the scope of the FOI request.
9. **Item 3.** Commander Forces Command Directive 49/17, released 21 July 2017, aims to ensure consistency of practice, mitigate risk of discrimination and empower commanders to successfully lead Sex and Gender Diverse members. Paragraphs one to six provide definitions and guiding principles with paragraph nine making direct reference to gender neutral toilet facilities. I found the rest of the document referred to administrative arrangements irrelevant to the FOI request and subsequently the remaining paragraphs have been redacted.
10. **Item 4.** The email dated 7 November 2017, sought input for the development of a Gender Integration Brief. With a redaction made to the initiating email which made reference to a number of other work requirements, unrelated to gender neutral toilets, the remainder of the document is assessed a releasable to the candidate.
11. **Item 5.** Upon examination of the document, I identified information contained in paragraphs one through to 14 irrelevant, as the focus of the Brief was on the facilities impacts and known costs to implementing revised pathways for women in infantry, vice gender neutral facilities. Paragraphs 15 and 16 make reference to unisex facilities for members transitioning gender and have been included for release.
12. **Item 6.** The author and recipient of the document titled *Army – Gender X Considerations*, are unknown. I have formed the view that details pertaining to recruiting, physical standards, policy and protocols are irrelevant to the scope of the request and they have been redacted. Two remaining sentences relate to unisex facilities and are releasable.
13. On balance, I have concluded that a response to this FOI request facilitates and promotes public access to information. In my view, there would have been no risk in releasing

the information on broader diversity/gender inclusion matters however, I have taken into account the guiding principles to delete irrelevant material from documents and provide access to edited copies under section 22 of the FOI Act. This course of action enabled me as the decision maker to more quickly reach a decision to provide access to the non-exempt information thus promptly meeting the applicant's request.

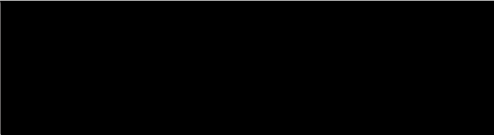
Documents in Existence

14. The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an Agency to create a new document in response to a request for access. In considering this aspect of the FOI Act I decided to seek clarification from the Director General Estate Services Delivery as to whether Estate and Infrastructure Group had any information captured in a database that could confirm what number of toilets within the Department had been turned into gender neutral toilets in the past financial year. The response received stated that *"through FY 17-18, Estate Works Program under the Program Theme of "Gender Diversity", found a total of 46 works on the Defence Estate. These works consist of either an upgrade of an existing unisex facility or conversion to one"* (Item 7).

Review Rights

15. The applicant has a right to request an internal review within thirty days if she is dissatisfied with my decision. The applicant also has the right to make a complaint to the Information Commissioner under Section 70 (1) about the action taken by me, as the decision maker, in the performance of functions or the exercise of powers, under the FOI Act. The complaint must be in writing and identify the Agency in respect of which the complaint is made.

16. Ms Smethurst is to be informed of my decision above and her review rights.



J.E. Noonan, CSC and Bar
CAPT, RAN
Accredited Decision Maker
Defence People Group