



Australian Government
Department of Defence

Reference: OCA/OUT/2018/BQ898589

FOI 172/18/19 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:

...specifically all quick assessments, investigation reports and briefs for Defence chiefs following allegations of inappropriate texting and Facebook posts involving IRAR personnel last year in Townsville, as reported by The Australian this week.

Personal email addresses, signatures, PMKeyS numbers 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.

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 identified four documents, totalling nine pages, as matching the scope of this request.

Decision

4. I have decided to:

- a. partially release four 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) [public interest conditional exemptions – personnel management, and effective and efficient operations of an agency], and section 47F [personal privacy] of the FOI Act
- b. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

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)
- e. advice provided by the Army Incident Manager.

Reasons for decision

Conditional Exemption – Section 47E(d) – Certain operations of agencies [effective and efficient operations of an agency]

- 6. In relation to section 47E(d), the Guidelines explain that for this exemption to apply, 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.
- 7. Information of a possible offence was provided to the chain of command in good faith with an expectation of being in confidence. Releasing this information could be expected to deter people from reporting incidences of unacceptable behaviour.
- 8. Also, releasing the details of the office that administers Army's sensitive issues could be expected to subject that office to direct enquiries from the public. An increase of direct enquiries to this office could reasonably be expected to distract and damage the effort that the office commits to highly sensitive issues. Defence has access mechanisms in place to respond to public enquiries.
- 9. Releasing this information would not identify unlawful activities or inefficiencies in policy or procedure. The effect of releasing the information could be expected to harm the quality, and level, of opinion and information about Army's processes provided by personnel in the future.
- 10. Taking into account the above factors, I consider that the release of the information would be an unreasonable disclosure of operational information and is conditionally exempt under section 47E(d) of the FOI Act.

Conditional Exemption – Section 47F(1) – Personal Privacy

- 11. Upon examination of the documents, I identified information, specifically names and comments about an individual other than the applicant. The third party involved themselves in this incident as they had an expectation of the information being provided in confidence.
- 12. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:
 - 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 documents
 - c. the availability of the information from publicly accessible sources
 - d. the effect the release of the personal information could reasonably have on the third party.
- 13. I found that the:
 - a. specific personal information listed is not well known

- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents
- c. information is not readily available from publicly accessible sources.

14. The release of the name and comments about the person 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 the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations – Sections 47E(d) and 47F(1)

15. I have found that some of the identified documents are conditionally exempt under sections 47E (d) and 47F(1) of the FOI Act. Section 11A (5) provides that, if a document is conditionally exempt, it must be disclosed ‘unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest’.

16. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and it would allow the applicant access to their own personal information.

17. However, 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). The information is not the applicant’s personal information.

18. 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:

- a. the protection of an individual’s right to privacy
- b. the interests of an individual or a group of individuals
- c. an agency’s ability to obtain confidential information
- d. an agency’s ability to obtain similar information in the future
- e. the management function of an agency.

19. Releasing opinions provided with the expectation of confidence during selection assessments could cause significant harm to the ADF’s selection processes and the individuals that make application for recruitment in the future.

20. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47E(d) and 47F(1) of the FOI Act.

21. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

Further Information

22. A number of documents matching the scope of this request were classified. The versions of the documents that are approved for release have been declassified.



AR Collingburn, DSM
COL
Accredited Decision Maker
Army

13 December 2018