



FOI 217/18/19 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:

A copy of the briefing document that supports the cancellation of Defence Instructions (General) ADMIN 45-2 ADMT NO 1 (B/1/2010) dated 26 March 2010.

I do not want personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, I am excluding duplicates of documents and only request final versions of documents.

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 have identified one document as matching the description of the request.

Decision

4. I have decided to:

- a. partially release the 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 [public interest conditional exemptions-certain operations of agencies] and section 42 [documents subject to legal professional privilege].
- b. remove signatures and mobile numbers in accordance with section 22(1)(a)(ii) [access to edited copies with exempt or irrelevant matter deleted] 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); and
- e. advice provided by Defence Legal.

Reasons for decision

Section 42 – Legal professional privilege

6. Upon examination of the document, I considered part of the information may attract legal professional privilege (LPP).

7. Section 42 of the FOI Act exempts from disclosure material that would be privileged from production in legal proceedings on the grounds of LPP.

8. Consequently, I consulted with Defence Legal who confirmed part of the content is subject to LPP. I also referred to the Guidelines which sets out a number of factors to be considered in relation to claiming an LPP exemption namely:

- whether there is a legal adviser-client relationship
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
- whether the advice given is independent
- whether the advice given is confidential

9. Having regard to the above, I have not identified any circumstance which would indicate that the right to claim LPP has been waived.

10. I therefore find that part of the document is exempt from release pursuant to section 42 of the FOI Act.

Section 47E – Operations of agencies

11. Section 47E(d) of the FOI Act provides as follows:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected, to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

12. I have determined that some information in the brief, if known externally to Defence, could highlight an area of Defence operations that may be exploited by entities seeking to benefit from, or inflict material harm, prompting an increased application of limited resources required to respond to and manage such incidents. Such an application of resources could be considered an unreasonable and an unnecessary diversion of limited resources. Consequently it is considered that to release the information could lead to an adverse impact on the proper and efficient conduct of the operations of Defence.

13. I therefore find that part of the document within scope of this request is conditionally exempt pursuant to section 47E of the FOI Act.

Public interest considerations

14. Section 11A(5) of the FOI Act requires 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.”

15. I note that disclosure may promote the objects of the FOI Act as information held by Government is a national resource. I also acknowledge that there is a public interest in releasing information that demonstrates steps agencies take to promote and adopt best practice.

16. While I accept there is a public interest in ensuring Defence undertakes its functions in a transparent and proper manner, there is a real potential that disclosure of the document would undermine the efficient operations of Defence.

17. Defence can ensure the greatest efficiencies in its operations by relying on the most effective application of its limited resources. There is a strong public interest in Defence operating at peak efficiency and effectiveness and that public interest is best advanced by redacting limited content from this document.

18. On balance, the factors against disclosure greatly outweighs any benefit to the public that may result from access to the document.

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

20. Therefore, I find that part of the document within scope of this request exempt under section 47E of the FOI Act.

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

21. Section 22(1)(a)(ii) of the FOI Act states the following:

(1) This section applies if:

a. an agency or Minister decides:

i. to refuse to give access to an exempt document; or

ii. that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access

22. Upon examination of the document, I identified information in the signature blocks and approval sections of the document that reveal personal details of actioning officers. As you are not seeking access to these personal details, they are considered material irrelevant to the request and I have decided to remove it in accordance with section 22(1)(a)(ii) of the FOI Act.

steven. Digitally signed
by steven.burge1
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12:18:42 +11'00'

Steven Burge
Accredited Decision Maker
Defence Executive Support Group

January 2019