



**DEFENCE FOI 271/21/22 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:

*“1 - The comprehensive privacy notice that explicitly advises the OJAG may publish the accused personal information.*

*2 - The date that this Privacy notice was updated, to include the OJAG publication warning, from the prior version in use before the Opening of PNI.*

*3 - The first DFM (Defence Force Magistrate) matter number (format is understood to be: YYYY-NNN-DFM) where this updated Privacy notice was issued in a summons to an accused, and also the date of that Trial. It is considered to be in the Public Interest, to establish how Military Justice Publication of Case Outcomes and Personal Information of accused persons under JAG Practice Note 1 is operating relative to the APP (Australian Privacy Principles)”*

**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 one document matching the description for item 1 of the request.

4. I identified no documents matching the description for items 2 and 3 of the request.

**Decision**

5. I have decided to:

- a. release one document in full.
- b. refuse access to documents of the request under section 24A(1)[Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

**Material taken into account**

6. 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; 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 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

7. Section 24A of the FOI Act states:

*Requests may be refused if documents cannot be found, do not exist or have not been received*

*Document lost or non-existent*

*(1) An agency or Minister may refuse a request for access to a document*

*if:*

*(a) all reasonable steps have been taken to find the document; and*

*(b) the agency or Minister is satisfied that the document:*

*(i) is in the agency's or Minister's possession but cannot be found; or*

*(ii) does not exist.*

8. Paragraph 3.94 of the Information Commissioner Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(1):

*...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...*

9. To ensure that 'all reasonable steps' have been taken in relation to this request, every reasonable avenue of identifying documents related to items 2 and 3 of the scope of the request have been exhausted.

10. The OJAG conducted searches on Objective, Defence's document and record management system to answer the questions posed in applications 2 and 3. No documents were identified.

11. I am satisfied that 'all reasonable steps' have been taken to locate the documents sought by the applicant. I am satisfied that the documents cannot be found, and refuse access to the request under section 24A (1) of the FOI Act.

12. I am able to answer the questions posed by the applicant outside the FOI framework, and will do so separately.

**april-leigh.rose** Digitally signed by april-leigh.rose  
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**AL Rose**  
Accredited Decision Maker  
Office of the Judge Advocate General