



Australian Government
Department of Defence

Defence Reference: FOI 554/20/21

IGADF Reference: BN31943686

DEFENCE FOI 554/20/21 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:

“From 31 March 2019 Defence opened the Superior Trials System by changing its policy with respect to publication of, and forecasting to Public and Press upcoming, Superior Trials of the Military Justice System (Court Martial and Defence Force Magistrate Hearings). The policy is enacted through JAG Practice Note 1 (<https://www.defence.gov.au/jag/Documents/Practice-Note-1-Publication.pdf>). The Inspector General ADF (IGADF) commissioned an Own Initiative-Inquiry 01/20T (OII) of the first 12 Months of operation of JAG Practice Note 1.

The information that is sought is: (1) The OII report 01/20 by IGADF The purpose of the request is to make a submission to the Royal Commission into Defence and Veteran Suicide and the Defence Ombudsman.”

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 1 document as matching the description of the request.

Decision

4. I have decided to partially release the document in accordance with section 22 of the FOI Act (access to edited copy), on the grounds that the deleted material is exempt under section 42 of the FOI Act.

Reasons for decision

5. Section 42(1) exempts a document if the document would be exempt from production in legal proceedings on the grounds of legal professional privilege.

6. A document, or part thereof, is exempt from production on the ground of legal professional privilege if all of the following apply:

- a. there exists a solicitor-client relationship;

- b. there have been confidential communications which are recorded in the document;
- c. the communications were for the dominant purpose of providing legal advice or in the context of actual or anticipated legal proceedings; and
- d. the privilege has not been waived.

7. I am satisfied that the legal adviser/client relationship has been established, as the advice was provided by a qualified lawyer, who was acting in their capacity as a professional adviser.

8. Further, I am satisfied that the specific material contained in that part of the document relevant to this request was created for the dominant purpose of giving legal advice, and there is no reason to doubt the legal advisers' independence in providing such advice. I note that legal professional privilege is the client's privilege to waive and I am satisfied that the waiver has not occurred. I note that while the material in question contained in the document was disclosed to more than one person in Defence, I have considered that this is to be expected due to the nature of the work undertaken. This matter of disclosure within an organisation is discussed in paragraph 5.148 of the Guidelines, which states modern organisations often work in teams and several people may need to know about privileged communications.

9. I find that disclosure of that part of the document exempt under section 42(1) would involve disclosure of a document that would be exempt from production in legal proceedings on the grounds of legal professional privilege. Accordingly, I am satisfied that part of the document is exempt under section 42(1).

Material taken into account

10. 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);

Further Information

11. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.



Andrew Snashall
Accredited Decision Maker