



**Australian Government**  
**Department of Defence**

*Objective Reference: AHQ/OUT/2021/BQ27755178*

**DEFENCE FOI 061/21/22 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. Any briefings - including hot issues briefs and ministerial submissions - provided to the Defence Minister regarding the Sydney University Regiment.*

*2. Any Question Time Briefs prepared for Defence portfolio ministers (or for the ministers representing those ministers in the Senate) regarding the Sydney University Regiment.*

*In both of the above, the search is limited to documents generated in the period between 1 May 2021 and 9 August 2021 inclusive."*

**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 three documents, totalling 18 pages, as matching the scope of this request.

**Exclusions**

4. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents and documents to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

**Decision**

5. I have decided to:

- a. release one document in full
- b. deny access to two documents under sections 47E(c) and 47E(d) [public interest conditional exemptions – personnel management, and effective and efficient operations of an agency] and 47F [public interest considerations – personal privacy] of the FOI Act
- c. 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**

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
  - 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 Officers within Army and the Inspector-General Australian Defence Force.

### **Reasons for decision**

#### **Section 22 – Edited copies with exempt or irrelevant matter deleted**

7. Section 22 of the FOI Act provides that if an agency or Minister decides:

*(i) to refuse 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*

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

8. The documents provided contain information and a mobile phone number that do not relate to the scope of the applicants request.

9. Considering all of the above, I decided that it was reasonably practicable to remove the material that did not fall within scope of this request and release the document in that form.

#### **Sections 47E(c) and 47E(d) – Certain operations of agencies [management and assessment of personnel; and effective and efficient operations of an agency]**

10. In relation to section 47E(c), the Guidelines explain that, where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemptions in section 47E(c) namely, that:

- a. an effect would reasonably be expected following disclosure
- b. the expected effect would be both substantial and adverse.

11. For this exemption to apply, the documents must either relate to:

- a. the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; or

- b. the assessment of personnel – including the broader personnel management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment or bonus or eligibility for progression.

12. 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.

13. Upon assessment of the documents I found they contained information concerning the management of personnel and the actions taken by command in relation to those interactions. Releasing this information could be expected to cause personnel to refuse to co-operate with the voluntary process of reporting instances of alleged unacceptable behaviour.

14. It is important that Defence is able to manage its personnel, including its culture. It is also of fundamental importance to operational requirements that Defence is able to manage its personnel and undertake disciplinary steps where appropriate. Failure to do so would unfairly affect those personnel subject to allegations and deny them procedural fairness. Any loss of trust or reluctance in employees providing honest information and feedback could reasonably be expected to have a substantial adverse effect on the overall management of personnel.

15. Taking into account the above factors, I consider that the release of the information would be an unreasonable disclosure of personnel management information and find that it is conditionally exempt under sections 47E(c) and 47E(d) of the FOI Act.

### **Section 47F - Personal Privacy**

16. Upon examination of the document, I identified information, specifically the names and information of individuals other than the applicant.

17. 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 document
- 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.

18. 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.

The release of the names and the personal information of individuals 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(c), 47E(d) and 47F**

19. In assessing whether disclosure is on balance, contrary to the public interest, I considered the guidelines together with a range of factors set out in section 11B(3) of the FOI Act, which favours access to a document:

- a. promote the objects of this Act (including all the matters set out in sections 3 and 3A)
- b. inform debate on a matter of public importance
- c. promote effective oversight of public expenditure
- d. allow a person to access his or her own personal information

20. I note that the disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the government is a national resource. However, disclosure of the specific conditionally exempt material would not increase public participation in the defence process, nor would it increase scrutiny or discussion of defence activities.

21. 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 or harm:

- a. the protection of an individual's right to privacy
- b. the interests of an individual or 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.

22. While I consider the release of the material removed under sections 47E(c) and 47E(d) and 47F may be of some interest to the applicant, however disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. There is also a strong public interest in maintaining the confidentiality of the material being investigated and the personal information of individuals identified in the documents. Furthermore, there is an expectation that defence manages the interactions of an ongoing investigation in a sensitive way.

23. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

24. Noting all the above, I consider that on balance the public interest factors against disclosure outweigh the factors for disclosure. I have therefore decided that it would be contrary to the public

interest to release the information considered exempt under subsection 47E(c), 47E(d) and 47F of the FOI Act.

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**MP Cochbain**  
COL  
Accredited Decision Maker  
Army