



OPMADF/2017/OUT/BB135658

FOI 063/17/18 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:

I am seeking access to documents (limit to final reports, including attachments) since 1 January, 2016, relating to:

1. Any ADF (including Navy, Army, Airforce) personnel/officers holding membership or with confirmed links to outlawed motorcycle gangs, or where an investigation into links is ongoing;

2. Any ADF personnel/ officers (including Navy, Army, Airforce) being caught with drugs or charged with drug offences, including de-identified results from each Service's Prohibited Substance Testing Program (PSTP).

For Item 2, please provide a document outlining the number of cases of ADF members being caught with drugs or charged with drug offences for 2015 to allow a comparison to 2016.

Excluding specific dates of events to protect identifying anyone (include year only).

Excluding personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers contained in documents that fall within the scope of this request. Also excluding duplicates of documents

FOI decision maker

2. I am the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified 105 documents, totalling 394 pages, as matching the description of the request.

4. The decision in relation to each document is detailed in a schedule of documents.

5. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

- a. Refuse access to Item 1 under paragraph 24A[Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act, on the grounds that it could not be found;
- b. Release one documents in full;
- c. partially release 92 documents relating to Item 2 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 33(a)(i) [Documents affecting national security] and/or 37 [Documents affect enforcement of law and protection of public safety] and/or 47E [Public interest conditional exemptions-certain operations of agencies] and/or 47F [Public interest conditional exemptions-personal privacy] of the FOI Act;

- d. Deny access to 12 documents on the grounds that they are exempt under sections 47F and/or 47E of the FOI Act; and
- e. 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

7. 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. officers within the department – advice was sort from all three services RAAF, ARMY and NAVY to provide results of PSTP testings.
 - f. Officers within the DSVS department were also approached to provide advice on ADF personnel being affiliated with Outlawed Motorcycle Gangs

Reasons for decision

Section 24A(1) of the FOI Act

8. Section 24A(1) of the FOI Act states:
24A 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.

9. The request outlined that the applicant sought documents in relation to ADF personnel/Officers holding membership or with confirmed links to outlawed motorcycle gangs, or where an investigation into links is ongoing.

Section 33(a)(iii) – International relations

10. Section 33(a)(iii) of the FOI Act exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. Paragraph 5.30 of the Guidelines describes international relations as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them, including relations between government agencies.

11. The documents within the scope of this request contain information, which if released, could reasonably be expected to damage the international relations of the Commonwealth. The documents contain details of a foreign country's investigation procedures. If this information were to be publicly released by Defence without specific authorisation from the other nations, it would likely cause damage to the international relations of the Commonwealth insofar as it could limit the Commonwealth's ability to deal with these countries in relation to similar matters in the future. The disclosure of such information may diminish the confidence which another country has in Australia as a reliable recipient of its confidential information, making that country less willing to cooperate with Australian agencies in the future.

Section 37 - Documents affecting enforcement of law and protection of public safety

12. A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law.

13. Section 5.91 of the Guidelines states:

Section 37(1)(b) is intended to protect the identity of a confidential source of information connected with the administration or the enforcement of the law. It is the source, rather than the information, which is confidential.

14. On review of the documents, I identified information that was provided by individuals to assist with an investigation on the understanding that the information would be treated confidentially. I have therefore decided to remove the information that would identify the confidential sources of information under section 37(1)(b) of the FOI Act.

Section 47E(d) – Certain operations of agencies

15. Section 47E of the FOI Act conditionally exempts documents where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain listed agency operations. In this instance the exempt material pertains to agencies techniques, procedures and capabilities relating to operations and investigations which could prejudice the effectiveness of similar future activities.

16. Disclosure of this information would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency. I consider the material is conditionally exempt under subsection 47E(d) of the FOI Act.

Section 47F - Personal privacy

17. Upon examination of the documents, I identified information, specifically pertaining to ADF personnel such as: names, other identifying information of personal correspondence, investigation details, and opinions belonging to persons other than the applicant. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to:

- 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.

18. Against these three criteria, I found that:

- a. the specific pieces of personal information relating to the individuals are not well known to the general public
- b. the persons to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the document
- c. this specific information is not readily available from publicly accessible sources.

19. Noting the above findings, I have decided that disclosure of the specific information would be an unreasonable disclosure of personal information belonging to other individuals. Accordingly, I consider that the material is conditionally exempt under section 47F of the FOI Act.

20. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

Sections 47E and 47F - Public interest considerations

21. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of factors that favour access to a document set out in section 11B(3) [public interest exemptions- factors favouring access] of the FOI Act. I note that disclosure may promote some of the objectives of the FOI Act, as information held by Government is a national resource.

15. In coming to my decision, I had regard to the Guidelines, specifically paragraph 6.29 in regard to public interest factors against disclosure and found that the identified material, if released:

- a. could reasonably be expected to prejudice the protection of an individual's right to privacy;
- b. could reasonably be expected to prejudice and agency's ability to obtain confidential information; and/or
- c. could reasonably be expected to prejudice the management function of an agency.

22. A Service Police investigation is a detailed process designed to take account of multiple perspectives of a situation and uncover the facts surrounding an incident. In this case, numerous individuals have given statements that have assisted in understanding the circumstances of this particular incident. Failure to protect the integrity of the witness statements and personal recollections has implications for personal privacy of all individuals involved. It also may compromise the ability of Defence to protect operating procedures in terms of operational scenarios.

23. While I note the release of this material would be of some interest to the applicant, it would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

24. Noting the above, I have decided that disclosure of the specific information would be an unreasonable disclosure of personal information belonging to others and have an adverse affect on agency operations. Accordingly, I consider that the material is exempt under sections 47E and 47F of the FOI Act.

Section 22

25. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to the applicant with deletions, but have decided against this course of action, as the document would be meaningless and of little or no value once the exempt material is removed.

Further Information

26. I note the applicant has also requested the number of cases of ADF members being caught with drugs or charged with drug offences for 2015 to allow a comparison to 2016. I can advise that 134 of ADF members were caught or charged with drug offences in 2015.

27. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

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WGCDR T. Lewis
Accredited Decision Maker
Associate Secretary Group