



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

Reference: R31585871

**FOI 080/17/18 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:

*“Documents relating to the prosecution of a defence member for assault occasioning actual bodily harm and unlawful wounding. DPSMS No: INV-ADF01-DWN-2015-32*

*Specifically, the outcome of the prosecution, transcripts of the trial, findings of the court, any disciplinary action, and sentencing remarks of the judicial officer.”*

*excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, 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 one documents as matching the description of the request.

**Decision**

4. I have decided to:

- a. partially release one documents 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 47F [public interest conditional exemptions-personal privacy] and/or section 33(a)(iii) [Documents affecting national security] of the FOI Act;
- b. 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**

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).

## Reasons for decision

### Section 33(a)(iii) – International Relations

1. Section 33(a)(iii) of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to cause damage to the international relations of the Commonwealth. In regards to the terms, ‘could reasonably be expected to’ and ‘damage’, the Guidelines specify:

*5.13 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.*

*5.14 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.*

*5.25 ‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage was likely to result from disclosure of the document(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments. A dispute between individuals may have sufficient ramifications to affect relations between governments. It is not a necessary consequence in all cases but a matter of degree to be determined on the facts of each particular case.*

2. With regards to international relations, the Guidelines provides:

*5.30 The phrase ‘international relations’ has been interpreted 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. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between government agencies...*

*5.32 For example, the disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future. On the other hand, the disclosure of ordinary business communications between health regulatory agencies revealing no more than the fact of consultation will not, of itself, destroy trust and confidence between agencies.*

3. Upon review, I considered that the names and details of international counterparts involved were not publicly available. Release of such material without the explicit agreement of relevant foreign governments and foreign entities could also diminish the relationship with Defence and adversely affect the ability of the Australian Government to maintain good working relationships.

4. Further, release of the information could lessen confidence in Australia’s ability to protect information and restrict the future flow of such information to the Australian Government.

5. Taking the above into account, I have decided to exempt the material under paragraph 33(a)(iii) of the FOI Act.

### **Section 47F – Personal Privacy**

6. I identified personal information of individuals other than the applicant contained in the documents, such as names, opinions and other identifying information.

7. The Guidelines note that *‘the personal privacy exemption is designed to prevent the ‘unreasonable’ invasion of third parties’ privacy’*.

8. 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; and
- d. any other matters that the agency considers relevant.

9. Against those criteria, I found that:

- a. the specific personal information relating to the individuals is not well known;
- b. the specific personal information is not readily available from publicly accessible sources; and
- c. the specific personal information is information that the individuals would not wish to have disclosed without their consent.

10. With reference to the above assessment, I consider the release of names, opinions and other identifying information of individuals other than the applicant would be an unreasonable disclosure of personal information and therefore conditionally exempt under section 47F(1) of the FOI act.

11. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

### **Public interest considerations under section 47F**

12. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines, together with a range of factors that favour access to a document set out in subsection 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

13. Disclosure of the specific personal information would promote some of the objects of the FOI Act as information held by the Government is a national resource and it would allow scrutiny or discussion of government activities.

14. While release of the specific information may be of some interest to the applicant, there is a strong public interest in protecting the privacy of the individuals whose personal details appear in the documents. Additionally, disclosure of the specific information would not promote oversight of public expenditure nor would it allow the applicant access to his own personal information.

15. On balance, I consider that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding information. The public interest is better served in this case by maintain the personal privacy of third parties named in the document.

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

### **Further Information**

17. 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.

**nicola.viney** Digitally signed by  
nicola.viney  
Date: 2017.10.16 08:30:39  
+11'00'

Nicola Viney  
Accredited Decision Maker  
Associate Secretary Group