



Australian Government
Department of Defence

Reference: OCA/OUT/2018/BI4218068

FOI 115/18/19 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:

ITEM 1 - a breakdown of the Notices of Positive Test Result outcomes under the Prohibited Substance Testing Program (PSTP) in table form for Army personnel at Lavarack Barracks, Townsville and all Army and Air Force personnel at RAAF Base Townsville for the financial year 2017/18 and in financial year 2018/19 between 1 July and 30 September.

ITEM 2 - a breakdown of the statistics for the date of detection, type of substance detected and outcome over the same period.

ITEM 3 - a breakdown of which of the Notice of Positive Test Result outcomes were detected under the Trial of Hair and Saliva Prohibited Substance Testing between the documented trial period of 1 October 2017 and 31 July 2018 including the date of detection, type of substance detected and outcome.

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, and documents sent to and from you. Furthermore, Defence only considers final versions of documents.

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 two documents, totalling two pages, as matching the description of the request.

Decision

a. I have decided to partially release two 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] of the FOI Act.

Material taken into account

4. 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 Career Management – Army and Royal Australian Air Force (RAAF) Administrative Sanctions and Medical Review.

Reasons for decision

Section 24A(1) of the FOI Act - Requests May Be Refused

5. 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.*

6. Paragraph 3.84 of the Information Commissioner Guidelines advises what detail this statement of reasons needs to 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 to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search.

7. To ensure that "all reasonable steps" have been taken in this request, every reasonable avenue of locating the documents has been exhausted. The details of these searches are outlined below.

8. RAAF Administrative Sanctions and Medical Review consulted their testing schedule and spreadsheet for financial year 2017/18, and Notice of Positive Tests Results (NPTR). No NPTR were identified in financial year 2017/18 for RAAF Base Townsville.

9. 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 or do not exist, and refuse access to this request under section 24A(1) of the FOI Act.

Section 47F(1) - Personal privacy

10. Upon examination of the documents, I identified personal information, specifically the dates of positive tests and their associated outcomes. This information together would make individuals “*reasonably identifiable in the particular circumstances*”.

11. The particular circumstances are a very small number of detections, each with the significant outcome of discharge from the services.

12. 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.

13. 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.

14. The release of the dates of positive tests and their associated outcomes, in the particular circumstances, could reasonably be expected to cause harm to the privacy of individuals. 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 47F(1)

15. I have found that the identified document is conditionally exempt under section 47F(1) of the FOI Act. Section 11A (5) provides that if a document is conditionally exempt, it must be disclosed unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

16. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors are that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and it would inform debate on a matter of public importance.

17. However, the disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

18. 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.

19. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47F(1) of the FOI Act.

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



AR Collingburn, DSM
Colonel
Accredited Decision Maker
Army

26 October 2018