



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

2016/1067695/1  
29/2017

**FOI 181/17/18 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:

*“Defence Force magistrates' decisions, judgements, sentences etc handed down in 2017 that relate to Canberra and/or the ACT.*

*“Relate to Canberra” includes matters where:*

- 1. The accused was a current or former defence member based in Canberra/ACT.*
- 2. The alleged or proven offences were committed in Canberra/ACT.*
- 3. The hearing was held in Canberra/ACT.”*

*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. In accordance with section 23 of the FOI Act, I am an officer authorised to make a decision in relation to this FOI request.

**Documents identified**

3. I have searched the Office of the Judge Advocate General records for all 2017 Defence Force magistrate trials finalised from 1 Jan 17 until the date of the request (8 Nov 17) to identify proceedings where: at least some part of the proceeding was physically conducted in Canberra; the accused person was posted to Canberra at the time of the alleged offending; the accused person was posted to Canberra at the time of the proceedings; and/or the charge sheet included a specific reference to Canberra.

4. I have identified six documents as containing material that I consider to fall within the scope of the request, namely, six findings and/or punishment sheets.

5. Enclosure 1 is a schedule listing these documents as serials 1 – 6 and summarising my decision in relation to each document. Enclosure 2 contains the six documents in the form approved for release. These six documents have been annotated, at their top right-hand corner, with the relevant FOI request number (181/17/18), item number and serial number.

**Decision**

6. I have decided to partially release the document in accordance with section 22 of the FOI Act on the grounds that the deleted material is irrelevant under section 22(1)(b)(ii) of the FOI Act or exempt under section 47F 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 document;
- c. the FOI Act;
- d. the *Privacy Act 1988 (Cth)*;
- e. the Guidelines Issued by the Australian Information Commissioner under Section 93A of the FOI Act (the Guidelines);
- f. Department of Defence legal advice and policy guidance in relation to FOI and privacy; and
- g. the *Defence Force Discipline Act 1982 (Cth)* (DFDA).

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

8. Subsection 47F(1) of the FOI Act states that “[a] document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person”.

9. In accordance with section 4 of the FOI Act and paragraphs 6.127 – 6.137 of the Guidelines, I have found that the documents contain personal information (names) of a number of persons (the persons on trial).

10. In accordance with section 47F of the FOI Act and paragraphs 6.138 – 6.148 of the Guidelines, I have found that this personal information is conditionally exempt because its disclosure would be unreasonable. In reaching this finding, I have considered and balanced the competing interests of public disclosure and personal privacy as follows:

- a. **Public disclosure.** The factors that I have found particularly relevant to public disclosure are: the public interest in government transparency; the information sheds light on the discipline system and its operation; court martial and Defence Force magistrate (DFM) proceedings are generally open to the public (including the media); there are no ‘court’ orders prohibiting the release of the information; the information was obtained as a result of the proceedings; the information is relatively recent and current; and the persons concerned should reasonably have expected that some level of information would be open to public scrutiny.
- b. **Personal privacy.** The factors that I have found particularly relevant to personal privacy are: the documents contain information which is ‘known’ (but not ‘well known’); the details of the proceedings are known (but, again, not ‘well known’); the information is not currently available from publicly accessible sources; the persons concerned would not reasonably have expected that all information would be open to public scrutiny; it is likely that the persons concerned would object to having all information open to public scrutiny; it is likely that the release of names would cause detriment or stress to those concerned; and there are no controls on further dissemination.

#### **Public interest considerations – Section 47F(1)**

11. Section 11A (5) of the FOI Act states that access must be given to a document even “if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest”.

12. I have considered subsection 11B(3) of the FOI Act and paragraph 6.19 of the Guidelines and found the following factors favouring disclosure particularly relevant to this request:

- a. promoting the objects of the FOI Act;

- b. informing debate on a matter of public importance (including revealing or substantiating that an official has engaged in misconduct or negligence); and
  - c. contributing to the administration of justice, the enforcement of the criminal law, or revealing or substantiating unlawful conduct.
13. I have considered paragraph 6.22 of the Guidelines and found the following factors against disclosure particularly relevant to this request:
- a. the disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy; and
  - b. the disclosure of certain information could reasonably be expected to prejudice the fair treatment of individuals (a factor of particular relevance to those persons who were acquitted or who subsequently had their convictions and/or punishments overturned).
14. In accordance with section 11B(4) of the FOI Act, I have not taken into consideration any irrelevant factors in making my decision.
15. Having regard to the factors favouring disclosure identified at paragraph 12, I am particularly mindful of: the importance of openness, transparency and a right to access (as emphasized by both the DFDA and the FOI Act); the public nature of DFDA proceedings and the right of the public (including the media) to attend and the media to report; the importance of justice being done and seen to be done; and promoting understanding of and confidence in the discipline system.
16. I am also of the view that these are all satisfied without providing the names of the persons on trial. Further, having regard to the factors against disclosure identified at paragraph 13, I am of the view that any additional public interest in providing this information is significantly outweighed by the public interest of observing certain privacy protections, particularly in the case of those persons who were acquitted or who subsequently had their convictions and/or punishments overturned. .
17. It is for those reasons that I find that the public interest factors against disclosure of the names of persons on trial, outweigh the factors for disclosure and I deem the information exempt under section 47F(1) of the FOI Act.

s22



NL Harvey  
GPCAPT  
Authorised Decision Maker  
Office of the Judge Advocate General

1 Dec 17

**Enclosures:**

1. Schedule of documents
2. Document in the form for release