



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

Reference: Objective ID: R30816925

**REVISED FOI 336/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the email of 10 July 2017, in which [REDACTED] sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act) of the Accredited Decision Maker's decision dated 4 July 2017.

2. The applicant's request was for access to the following documents under the FOI Act:

*“Any memos, reports, correspondence or other documentation created within the last 12 months relating to live-fire exercises which raise new incidents or new safety issues or concerns that need to be addressed.*

*Excluding individual Incident Reports but including a database report which summarises these Incident Reports.*

*Excluding personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents.”*

**Contentions**

3. In his application, the applicant requested an internal review of the original decision. The applicant stated *‘It is asserted that providing me with a database summary of live-fire incidents would impede several investigations in the Northern Territory. This is highly doubtful, given that I am requesting simply a list of incidents and their basic categorisation, not the detailed or alleged circumstances of a particular incident. General information about accidents and other safety matters is clearly in the public interest.’*

4. The purpose of this statement of reasons is to provide the applicant with a fresh decision relating to the documents.

**Reviewing officer**

5. I am authorised to make this internal review decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

**Documents subject to internal review**

6. Taking into account the applicant's contentions, I have identified ten documents as subject to the internal review. I have provided a schedule of documents outlining the decision of the internal review.

### **Internal review decision**

7. After careful consideration, I have decided to vary the original decision by releasing further information in Serial 1. Information considered exempt in the remaining material has been removed under section 37(1)(a) [documents affecting enforcement of law] and section 47F [personal privacy] of the FOI Act.
8. I have upheld the original decision for Serials 2-10 to deny access to material under section 47E(d) [certain operations of an agency] of the FOI Act.
9. Further to the above, material that did not relate to live fire, as well as information detailing individual incidents, is considered irrelevant and therefore has been removed under section 22(1)(b)(ii) of the FOI Act.
10. A copy of Serial 1 in the form approved for release is attached. As I have upheld the decision relating to Serials 2-10 I have not provided a copy of those documents.

### **Material taken into account**

11. In arriving at my decision, I had regard to:
  - a. the scope of the applicant's request and subsequent internal review application;
  - b. the original decision;
  - c. the content of the documents subject to the internal review;
  - d. relevant provisions in the FOI Act;
  - e. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
  - f. advice received from Army Headquarters.

### **Findings and reasons**

#### **Section 37(1)(a) – documents affecting enforcement of law**

12. Section 37(1)(a) of the FOI Act states that a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to, prejudice the conduct of an investigation of a breach, or possible breach, of the law.
13. I identified material which relates to ongoing investigations into the incidents to determine whether further legal action should be instigated. As the investigations are still current, I consider the release of the information could reasonably be expected to prejudice the conduct of the ongoing investigations.
14. Noting the above, I consider this material to be exempt under section 37 of the FOI Act.

### **Section 47F(1) – public interest conditional exemptions – personal privacy**

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

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

17. 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 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.

19. The release of names and other identifying information could reasonably be expected to cause harm to individuals’ 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 is conditionally exempt under section 47F(1) of the FOI Act.

20. 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**

21. 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.

22. 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.

23. 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.

24. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the material in question. I therefore decided that it would be contrary to the public interest to release the specific information considered exempt under section 47F of the FOI Act.

#### **Section 47E(d) - certain operations of an agency**

25. Section 47E(d) of the FOI Act states:

*“A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.”*

26. Upon review, I identified material in Serials 2 to 10 such as techniques and procedures in live fire drills which are used to train Defence members to operate weapons and explosives in demanding circumstances.

27. The systems and procedures which the Australian Army uses to train Defence members in operating the weapons are put in place to identify vulnerabilities of the weapons, as well as the operators. I consider that if this information were to be disclosed, it could provide hostile foreign forces with an advantage over Australian Defence personnel which would in turn harm the safety of Defence personnel in combat.

28. Therefore, I consider if this material were to be released it would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

29. Taking into account my findings, I have decided the material is conditionally exempt under section 47E(d) of the FOI Act.

30. Section 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless access to the document would be contrary to the public interest.

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

31. I have considered the Guidelines, together with a range of factors that favour access to a document set out in section 11B(3) of the FOI Act.

32. I note that disclosure may promote some of the objects of the FOI Act as information held by the Government is a national resource.

33. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I found relevant to this request are that disclosure of the documents could reasonably be expected to:

- a. prejudice security and law enforcement;

- b. prejudice the management function of an agency; and
- c. harm the interests of an individual or group of individuals.

34. I consider the release of the information requested could reasonably be expected to compromise the effectiveness of Defence's training methods and foreign hostile forces may gain an advantage over Australian Defence members in combat. Therefore I found that the public interest factors against disclosure outweigh the factors for disclosure of the information.

35. In coming to the above decision, I also considered subsection 11B(4) of the FOI Act. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the material in question. I therefore decided that it would be contrary to the public interest to release the specific information considered exempt under section 47E(d) of the FOI Act.

## Section 22


36. Section 22 of the FOI Act requires a decision maker to give an applicant access to an edited copy of a document with the exempt material deleted, if it is reasonably practicable to do so and retain a copy of a meaningful non-exempt edited copy of the document.

37. Based on my findings and reasons set out above, I found that it is not practicable to make an edited copy of the Serials 2 to 10 without them becoming meaningless.

## Further information

38. The document for Item 1 was prepared from a database of all safety incidents managed by Army. The scope to prepare this document for the applicant was set broadly. Consequently, many incidents that were captured in the spreadsheet were not live fire safety incidents. Many were also the result of movement and activity, not a result of operating a weapon.

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Ms Joanne Anderson  
Decision Maker – Internal Review