



## DEFENCE FOI 044/22/23 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 kindly request a copy of all emails and corresponding file attachments, sent to/from bcc/cc’d RJ Denney AM, Air Vice-Marshal Head of Air Force Capability for the period 27 October 2021 to 26 July 2022 (inclusive), that contain any of the following keywords: Unexplained Aerial Phenomena, Unidentified Aerial Phenomena, UAP, Unidentified Flying Object, UFO, Unidentified Flying Objects, UFOs, Unauthorised Aircraft Movement, UAM, Unauthorised Aircraft Movements, UAMs, Unusual Aerial Sighting, Unidentified Phenomena. I also kindly request that personal details be limited to the full names of individuals involved in any applicable FOI response.”*

### 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 14 documents 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/document number to each of the documents, which corresponds with the schedule.

### Exclusions

6. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

### Decision

7. I have decided to:
  - a. release five documents in full;
  - b. partially release nine 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 47E(c) [public interest conditional exemptions - certain operations of agencies] and section 47F [public interest conditional exemptions - personal privacy] of the FOI Act; and
  - c. remove irrelevant material under section 22 of the FOI Act.

### Material taken into account

8. 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; and
- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

### **Reasons for decision**

#### **Sections 47E – Certain operations of agencies**

9. Upon examination of the documents, I identified nine documents containing information relating to Defence personnel, including names, contact numbers and email addresses. Subsection 47E(c) 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:*

*(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*

10. The Australian Information Commissioner has issued Guidelines under section 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. In relation to subsection 47E(c) of the FOI Act, the Guidelines explain that, where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address whether:

- a. an effect would reasonably be expected following disclosure; and
- b. the expected effect would be both substantial and adverse.

11. For this exemption to apply, the documents must relate to either:

- i. the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; and
- ii. the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

12. The information contained within the documents included information that identified personnel who have been involved, or contributed, in the preparation of Senate Estimate Brief SB21-001257 and material relating to Unidentified Flying Objects or Unidentified Aerial Phenomena. Releasing this information could reasonably be expected to increase the likelihood of these individuals being contacted directly, or harassed, regarding their involvement in the subject matter.

13. It is important that Defence is able to manage its personnel, including its culture and morale. Failure to do so would unfairly affect those personnel involved, and could reasonably be expected to have a substantial adverse effect on the overall management of those personnel.

14. In conclusion, I am satisfied that the documents are conditionally exempt under section 47E(c) of the FOI Act.

15. 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.

### **Sections 47F – Personal Privacy**

16. On review of the documents, I identified information, specifically names of third parties other than the applicant. I found the material to be conditionally exempt under section 47F of the FOI Act.

17. When assessing whether the disclosure of this 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; and
- d. any other matters that the agency or Minister considers relevant.

18. Against the above criteria I found:

- a. that the specific personal information is not well known;
- b. the individuals whose personal information is contained in the document is not known to be associated with the matters dealt with in the documents;
- c. the information is not readily available from publicly accessible sources;
- d. release of the information may cause undue stress on the third parties, or cause them to be directly contacted in relation to the material;

19. Taking into account the above factors, I consider that the release of the material would be an unreasonable disclosure of personal information of individuals other than the applicant and could reasonably be expected to cause harm to their privacy. I therefore have decided that this information 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.

### **Section 47E and 47F - Public interest considerations**

21. In assessing whether disclosure is on balance, contrary to the public interest, I considered the Guidelines together with a range of factors set out in section 11B(3) of the FOI Act, which favours access to a document to:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) inform debate on a matter of public importance;*
- (c) promote effective oversight of public expenditure;*
- (d) allow a person to access his or her own personal information*

22. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

23. 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; and
- c. an agency's ability to obtain similar information in the future.

24. While I consider that release of the material removed under sections 47E may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. There is also a public interest in maintaining the confidentiality of the names and contact details of Defence personnel who assist in or prepare Senate Estimate Briefs. This public interest extends to Senate Estimate Brief SB21-001257, and material relating to Unidentified Flying Objects or Unidentified Aerial Phenomena, where there is an expectation that Defence manages personnel information in a sensitive way.

25. While I consider that release of the material removed under sections 47F may be of some interest to the applicant, disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure. Furthermore, the public interest is better served in protecting the privacy of individuals whose personal details are contained within these documents from release to the public at large.

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

27. After weighing all of the above, I consider that, on balance the public interest factors against disclosure outweigh the factors for disclosure. I have therefore decided that it would be contrary to the public interest to release the information considered exempt under subsections 47E(c) and 47F of the FOI Act.

#### **Further Information**

28. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

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