



DEFENCE FOI 832/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

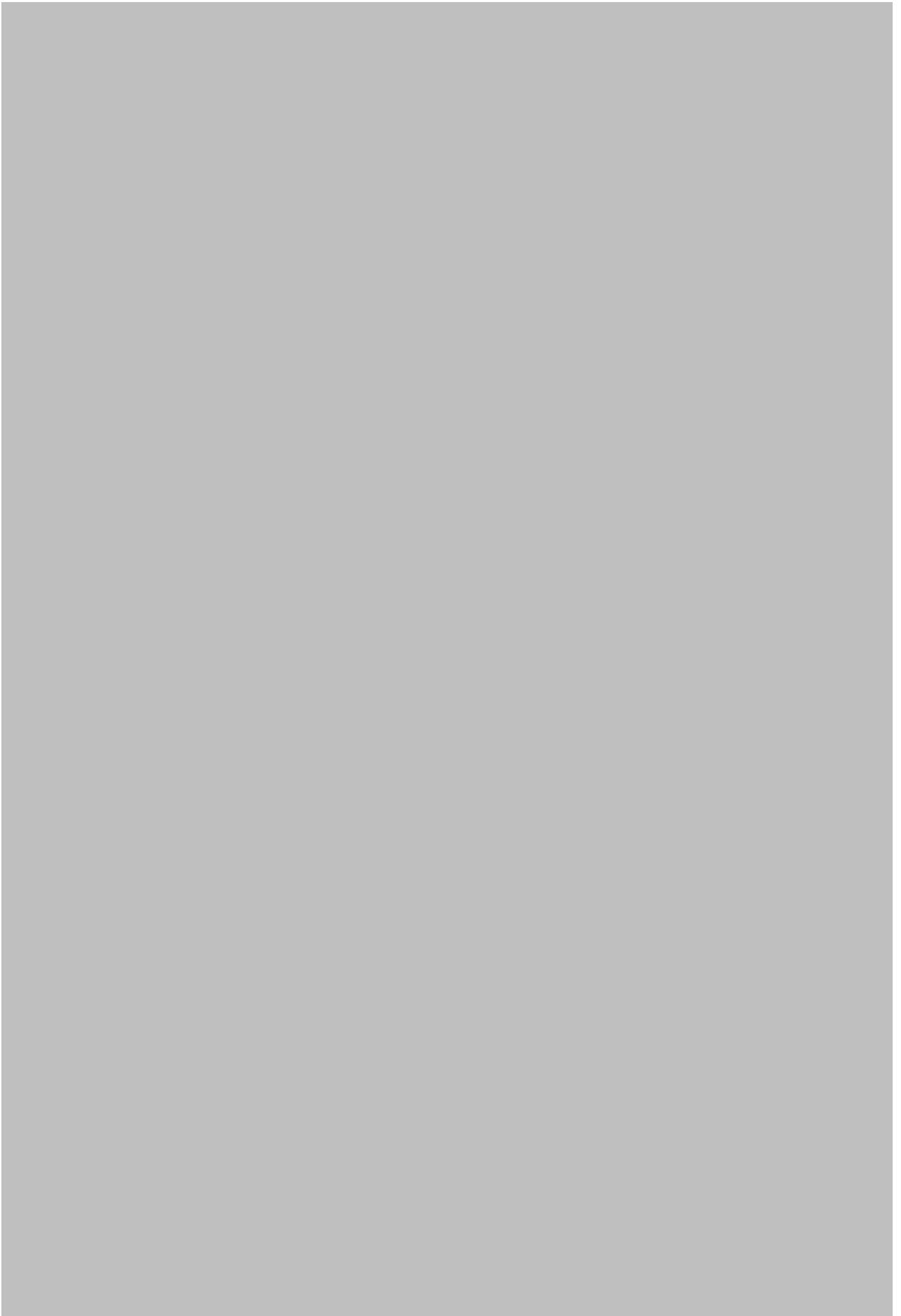
1. I refer to the request by [REDACTED] (the applicant), dated and received on 29 April 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

Documents relating to the implementation of recommendations two (2) to five (5) made by the DHAAT, in particular the fifth (5th) recommendation which was to amend Section 110(V)(1) of the Defence Act 1903 to provide a mechanism for review of decisions to withhold, forfeit or restore medals. These recommendations were set out in the Report released by the DHAAT on 7 September 2015 titled 'Report of the inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards (2015).'

*Timeframe: from date
07/09/2015 - 12:00am*

*Timeframe: to date
18/04/2024 - 12:00am*





FOI decision maker

5. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

6. I have identified 21 documents as falling within the scope of the request.
7. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

8. Signatures and mobile telephone numbers are excluded from this request.

Decision

9. I have decided to:
 - a. partially release 21 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] of the FOI Act; and
 - b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

10. In making my decision, I have had regard to:
 - a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions of 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

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

11. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse access to an exempt document or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.
12. The documents contain exempt and irrelevant material such as mobile telephone numbers, signatures and other information that does not relate to the request.
13. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents to you in an edited form.

Section 47E(c) – Public interest conditional exemptions – certain operations of agencies

14. Section 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*

15. The Guidelines provide, at paragraph 6.113, 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 both elements of the conditional exemption in s 47E(c), namely, that:

- an effect would reasonably be expected following disclosure*
- the expected effect would be both substantial and adverse.*

16. I find that the material in the documents relates to the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety.
17. The relevant documents contain names and direct contact details of Defence personnel. The names and direct contact details of Defence personnel within the requested documents are not publicly available and disclosure of these would, or could reasonably be expected to, have a substantial adverse effect on the health and wellbeing of these individuals. In order to ensure staff, maintain their right to be safe at work and safe from harm as a result of their work, their names and direct contact details are not freely provided.
18. With respect to staff names, I am also satisfied that if these details of Defence personnel are made publicly available, it would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel. I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of Defence personnel. Disclosure of names could therefore reasonably be expected to prejudice the management of personnel as the applicant, with their prior knowledge of Defence, could contact these personnel directly.
19. Further, the FOI Act does not control or restrict any subsequent use of dissemination of information released under the Act. As such, consideration must be given to whether release of names of personnel that are not currently available in the public domain could have a substantial and adverse impact on these individuals. I consider that the disclosure of this information could cause occupational health and safety concerns if the individuals were directly contacted by the applicant or other members of the public. This would, or could reasonably be expected to, substantially and adversely impact the agency's ability to manage its personnel.
20. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(c) of the FOI Act.

Public interest considerations - sections 47E(c)

21. Section 11A(5) of the FOI Act states:

The agency or Minister must give the person access to the document 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.

22. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

- (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.*

23. In my view, 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).

24. 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:

- the protection of an individual's right to privacy;
- the interests of an individual or a group of individuals;
- an agency's ability to obtain confidential information;
- the management function of an agency; and
- the personnel management function of an agency.

25. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. As I have established above, the release of the names of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of Defence personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.

26. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.

27. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under sections 47E(c) 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.

Digitally signed
by
michelle. [redacted]
Date: 2024.06.12
16:26:05 +10'00'

Michelle [redacted]

Accredited Decision Maker

Defence People Group

Department of Defence