



DEFENCE FOI 998/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 19 June 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“Defence Honours And Awards Tribunal Inquiry into Recognition of Service with the Commonwealth Monitoring Force-Rhodesia 1979-80 Full report with all Appendixes (1-4) dated 8th Nov 2010.

Transcripts of submissions made to the Tribunal”

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 have identified 16 documents as matching Item 1 of the scope of the request.
4. I have identified no documents as matching Item 2 of the scope of the request.
5. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

6. Signatures contained in documents that fall within the scope of the FOI request are excluded from this request. Defence has only considered final versions of documents.

Decision

7. I have decided to:
 - a. partially release one document 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 s47F [public interest conditional exemptions - personal privacy] of the FOI Act;
 - b. refuse access to 15 documents on the grounds that the documents are considered exempt under section s45 [documents containing material obtained in confidence] of the FOI Act;
 - c. refuse access to Item 2 of the request under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
 - d. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

8. 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

9. 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.
10. The document contains exempt and irrelevant material and information (signatures) that does not relate to the request.
11. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the document to you in an edited form.
12. Where a decision maker denies access to a document, section 22(1) of the FOI Act requires that they consider releasing the document with exempt matter deleted, if possible.
13. Paragraph 3.98 of the Guidelines provides that:

...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.
14. I have considered disclosing Documents 1 - 15 to you with deletions, but have decided to refuse access to the documents as they would be meaningless and of little or no value once the exempt material is removed.

Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

15. Section 24A(1) of the FOI Act states:
 - (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.*
16. Paragraph 3.94 of the Guidelines advises the detail this statement of reasons should 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...

17. To ensure that all reasonable steps have been taken in relation to Item 2 of this request, every reasonable avenue of locating potential documents matching Item 2 of the request has been exhausted.
18. In relation to Item 2 of the request, no transcripts of submissions were located as the Defence Honours and Awards Tribunal (the Tribunal) did not transcribe any oral submissions made to the Tribunal.
19. 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 the request under section 24A(1) of the FOI Act.

Section 45 – Documents containing material obtained in confidence

20. Section 45 of the FOI Act states:

(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency of the Commonwealth), for breach of confidence.

21. In relation to a breach of confidence, the Guidelines further explain:

Breach of Confidence

5.158 A breach of confidence is the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence. The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.

...

5.189 To found an action for breach of confidence (which means s 45 may be applied by an agency or minister), the following 5 criteria must be satisfied in relation to the information:

- *it must be specifically identified*
- *it must have the necessary quality of confidentiality*
- *it must have been communicated and received on the basis of a mutual understanding of confidence*
- *it must have been disclosed, or threatened to be disclosed, without authority*
- *unauthorised disclosure of the information has or will cause detriment.*

22. Upon examination of the material, I have formed the view that disclosure of the information would be a basis for an action to be brought against the Commonwealth for breach of confidence and for compensation to be sought for loss or damages arising from the disclosure.

23. The Submissions made by persons to the Tribunal's Inquiry Into Recognition Of Service With The Commonwealth Monitoring Force – Rhodesia 1979-80 (the Inquiry) was obtained on the basis of a mutual understanding of confidence to ensure frank and open conversations. Outside formal reporting obligations, I believe disclosure of this information could have a substantial adverse effect on the future supply of information in similar situations.
24. In view of the above, I find that the relevant material is exempt pursuant to section 45 of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

25. Section 47F(1) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

26. The FOI Act shares the same definition of 'personal information' as the *Privacy Act 1988* (Cth). The Guidelines provide that:

6.128 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and*
- (b) whether the information or opinion is recorded in a material form or not.*

27. I found that the documents contain personal information of other persons. This includes their names which would reasonably identify third parties, namely the identities of the persons who made a submission to the Tribunal's Inquiry.
28. In my assessment of whether the disclosure of personal information is unreasonable, I considered the following factors in accordance with section 47F(2):
- 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; and
 - e. the effect on the future supply of information in similar situations.
29. I found that the specific personal information listed is not well known, individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the document and the information is not readily available from publicly accessible sources.

30. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - section 47F

31. 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.

32. 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.

33. In my view, disclosure of this information would not increase public participation in the Defence or Tribunal process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence or Tribunal activities (section 3(2)(b) of the FOI Act). Disclosure of this information would likely have the opposite effect and could result in decreased public participation in future inquiries undertaken by the Tribunal.

34. 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;
- an agency's ability to obtain confidential information; and
- an agency's ability to obtain similar information in the future.

35. I consider that there is a strong public interest in maintaining an individual's right to privacy (particularly in circumstance where that person has made a confidential submission to the Tribunal). I also consider that disclosure of this information could prejudice the Tribunal's ability to obtain similar information in the future or may result in decreased public participation in future inquiries undertaken by the Tribunal. Accordingly, factors against disclosure outweigh any factors for disclosure.

36. 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.

37. 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 section 47F of the FOI Act.

FURTHER INFORMATION

38. The document matching the scope of this request contained a dissemination limiting marker (DLM). As the document has been approved for public release, the DLM has been struck through.

Digitally signed by

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Accredited Decision Maker
Associate Secretary Group
Department of Defence