



BP43150853

DEFENCE FOI 979/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 12 June 2024 by the Department of Defence (Defence), for access to the following documents under the Freedom of Information Act 1982 (Cth) (FOI Act):

“F/A-18F DEMONSTRATION DOCUMENTS

No. 1 Squadron F/A-18F demonstration routine sheet and script that is used as of current.

Timeframe: 03/03/2023 to 20/08/2023”.

FOI decision maker

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

Documents identified

4. I have identified three (3) documents as falling within the scope of the request.

Decision

5. I have decided to:

- a. release one (1) document in full
- b. partially release two (2) 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 sections
 - i. 47E(c) and 47E(d) [public interest conditional exemptions – certain operations of an agency]
 - ii. 47F [public interest conditional exemptions - personal privacy] of the FOI Act.

Material taken into account

6. 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
- 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 47E(c) – Public interest conditional exemptions – certain operations of agencies

7. 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

8. The Guidelines provide, at paragraph 6.102, 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.*

9. Upon assessment of the document, I found that it contained information concerning the names of Defence personnel. The release of material identifying the names of Defence personnel in documents, relates to Defence's management of personnel in regards to the maintenance of occupational health and safety standards.

10. In the case of 'ABK' and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner (IC) accepted that staff who were contacted directly, could be subject to excessive and abusive communications that may give rise to work health and safety concerns.

11. I am satisfied there is a reasonable expectation that the names of Defence personnel could be used inappropriately in a manner which adversely affects the health, wellbeing and work of Defence personnel. The disclosure of the names of Defence personnel could therefore, reasonably be expected to substantially adversely impact Defence's staff management function of maintaining workplace health and safety standards.

12. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(c) of the FOI Act.

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

13. 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 the agency.

14. The Guidelines, at paragraph 6.115, provide that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.

15. Upon assessment of the documents, I identified information relating to the operational capabilities of Defence. The Guidelines (at paragraph 6.112) provide that I should consider whether disclosure of the information 'would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient.' Given that the material contained within the documents is not publicly available, I am satisfied that release of the material could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.

16. Accordingly, the information is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

17. 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).

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

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

...

(c) whether the information or opinion is true or not; and

(d) whether the information or opinion is recorded in a material form or not.

19. I found that the documents contain the personal information of other persons. This includes their names, contact details, employment information, and other information that would reasonably identify third parties. 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.

20. 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.

21. Accordingly, the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E(c), 47E(d) and 47F

22. 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.

23. 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.*

24. 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).

25. Paragraph 6.233 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:


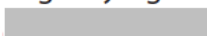
- the protection of an individual's right to privacy
- the interests of an individual or a group of individual
- the management function of an agency
- the personnel management function of an agency.


26. 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. The names of Defence personnel should therefore, not be disclosed as the public interest against their disclosure outweighs the public interest in their release.

27. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of the material contained in the documents. In my view it would be contrary to the public interest to disclose the operational information of Defence and the personal information of third parties.

28. 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.

29. 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), 47E(d) and 47F of the FOI Act.

 Digitally signed by

Date: 2024.08.15
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 **CSC**
Group Captain
Accredited Decision Maker
Royal Australian Air Force