



DEFENCE FOI 0078/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 24 Jul 24 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“I request a findings and punishment report for all Courts Martial and Defence Force Magistrate (i.e. all ADF “Superior Tribunal”) matters that were dealt with between the dates of 1 July 2017 and 30 June 2019. It is asked that the requested report contain the following information for each matter:

Date Finalised;
Location where heard;
Name of Accused;
Rank of Accused;
PMKeys of Accused;
Service of Accused;
Proceeding number;
Type of Trial;
Name and rank of presiding DFM/JA;
Charge(s);
Plea(s);
Finding(s);
Punishments and/or Orders;
Case Summary; and
List of any Petitions, Reviews and/or Appeals”.

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. One document was generated in accordance with subsection 17(1)(c)(i) of the FOI Act to satisfy the description of the request. This was done on the basis that a written document could be produced containing the information in discrete form by the use of a computer ordinarily available to Defence for retrieving or collating stored information.

Decision

4. I have decided to partially release the 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 47F [public interest conditional exemptions - personal privacy] of the FOI Act.

Material taken into account

5. In making my decision, I have had regard to:
 - a. the terms of the request;
 - b. the content of the identified document 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 47F – Public interest conditional exemptions - personal privacy

6. 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).

7. 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:

- (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.*

8. I found that the document contains personal information of other people. This includes their names and PMKeyS number, which would reasonably identify third parties.
9. 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; and
 - d. the effect the release of the personal information could reasonably have on the third party.
10. I found that the specific personal information listed is not well known, individuals whose personal information is contained in the document 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.

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

Public interest considerations - section 47F

12. 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.

13. 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.

14. 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).

15. 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; and
- the interests of an individual or a group of individuals.

16. 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.

17. 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 the applicant. Accordingly, I find that the information is exempt under section 47F of the FOI Act.

FURTHER INFORMATION

18. To assist the applicant, I would like to highlight that the document lists the matters in order of 'date of trial' not by sequential proceeding number. Additionally, there are no case summaries for matters in the requested period.

Digitally signed by

Date: 2024.08.20
11:57:59 +10'00'

Commander, RAN
Accredited Decision Maker
Office of the Judge Advocate General
Department of Defence