



DEFENCE FOI 365/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 14 November 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982 (Cth)* (FOI Act):

“I seek access to procedures established by the Secretary for the Department, or by any other relevant person, pursuant to the obligation arising under s 59(3) of the Public Interest Disclosure Act 2013 (Cth).”

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 one document as falling within the scope of the request.

Decision

4. I have decided to:
 - a. 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 sections 47E(c) and (d) [public interest conditional exemptions – certain operations of agencies] 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 47E(c) – Public interest conditional exemptions – certain operations of agencies

6. 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

7. The Guidelines provide, at paragraph 6.102, that:

Where the document relates to the agency's policies and practices in relation 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.*

8. The document contains the name and signature of Defence staff. The name and signature of Defence staff contained within the document are not publicly available and disclosure could reasonably be expected to have an adverse effect on the health and wellbeing of the individual.

9. I am satisfied there is a reasonable expectation that the name and signature of Defence staff could be used inappropriately, in a manner which adversely affects the health and wellbeing of the Defence staff member. Disclosure could, therefore, reasonably be expected to have a substantial and adverse impact on the staff management function of Defence in maintaining workplace health and safety standards.

10. 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

11. 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.

12. 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 operations in an expected manner.

13. Upon examination of the document I identified information associated with an investigative processes within Defence that would not be widely known. I have determined that the disclosure of the information would or could reasonably be expected to negatively impact the system by which defence undertakes its investigative operations. The document includes information of investigative practices that, if released, would reduce their efficacy.

14. The Guidelines provide, at paragraph 6.112, 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 release of certain methods and procedures conducted during the investigative process

would reduce our ability to gather information at the level and quality that is currently required, I am satisfied that release of the information could reasonably be expected to lead to a change in Defence's process that would not lead to any efficiencies.

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

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

16. 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.

17. 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.

18. 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).

19. 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:

- an agency's ability to obtain confidential information;
- the management function of an agency; and
- the personnel management function of an agency.

20. It is in the public interest that Defence can conduct investigations in an efficient and confidential manner. This information should not be disclosed as the public interest against their disclosure outweighs the public interest in their release.

21. 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.

22. 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) and 47E(d) of the FOI Act.



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by 

Date: 2024.12.09

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Accredited Decision Maker
Associate Secretary Group
Department of Defence