



DEFENCE FOI 098/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 1 August 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

1. I am seeking emails from 2019 to 2023 from Defence to social media platform Instagram regarding the social media accounts “thepineappleexpress_vc”, “tpevc”, “expressivepineapple_tep” and “theexpressivepineapple”.

2. I am seeking emails from 2019 to 2023 from Defence to social media platform Facebook regarding the social media accounts “The Pineapple Express” “TPE” and “The Expressive Pineapple”.

3. I am seeking emails from 2019 to 2023 from Defence to any other social media platform or news agency regarding the social media accounts “thepineappleexpress_vc”, “The Pineapple Express”, “tpevc”, “expressivepineapple_tep” and “theexpressivepineapple”.

Background

2. On 22 August 2023, the period for dealing with the request was extended from 31 August 2023 until 30 September 2023 under section 15(6) [extension of processing period to comply with requirements of section 26A, 27 or 27A] of the FOI Act to enable consultation with a business in accordance with section 27(1)(b) of the FOI Act.

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 22 documents as falling within the scope of the request.
5. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

6. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Decision

7. I have decided to:
 - a. partially release 22 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 redacted material is considered exempt under section 47E [public

interest conditional exemptions - operations of agency] and section 47F [public interest conditional exemptions - personal privacy] of the FOI Act.

- b. 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;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. advice received as part of a consultation process.

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. I have identified exempt information within the documents that is considered irrelevant to the request which includes mobile numbers and comments on social media pages.
- 11. 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 – Public interest conditional exemptions – certain operations of agencies

- 12. Section 47E of the FOI Act relevantly 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;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.*

- 13. In relation to section 47E(c) of the FOI Act, the Guidelines provide, at paragraph 6.113, that *where a 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 exemptions in section 47E(c) namely, that:*
 - a) an effect would reasonably be expected following disclosure*
 - b) the expected effect would be both substantial and adverse*

14. I find that certain material contains images and doctored images of personnel in which disclosure would, or could reasonably cause an adverse effect of personnel.

15. In relation to section 47E(d) of the FOI Act, the Guidelines at paragraph 6.123 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.

16. In the case of 'ABK' and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner (IC) found that where the direct names, email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to reasonable expectation that the release of direct contact details would undermine the operation of established channels of communication with the public. Further, the IC accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.

17. If the contact details of Defence personnel were to be made publicly available, it would have substantial adverse effects on the proper and efficient operation of existing public communication channels. Further, 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, email addresses, location and phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.

18. Accordingly, I am satisfied that the relevant information contained within the documents is conditionally exempt under sections 47E(c) and 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

19. 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).

20. 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.

21. I have found that the information contain personal information of other persons. The documents include names and phone numbers which if disclosed, could reasonably be expected to identify the third parties.

22. 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.
23. I found that the personal information relating to the third parties is not readily available from publicly accessible sources and could reasonably identify or cause harm to the individuals.
24. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E and 47F

25. 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.

26. 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);*
27. 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.
28. While I accept that there is a public interest to ensure that Defence maintains the Commonwealth's good internal working relationships with its stakeholders, I consider that the release of this information would harm the effectiveness in obtaining similar information or have a substantial adverse effect on the proper and efficient conduct of the operations of Defence and the management of its personnel. In my view, this would not be in the public interest.
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.

30. 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.
31. Accordingly, I find that the information is exempt under the sections 47E and 47F of the FOI Act.

Joanne



Mrs Joanne [redacted]
Accredited Decision Maker
Army Headquarters
Department of Defence

Digitally signed by Joanne
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