



DEFENCE FOI 382/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by James Smith (the applicant), dated and received on 22 October 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

Latest versions of directives, instructions, orders, policies, etc relating to use of social media by defence personnel.

Background

2. On 22 October 2023, the applicant submitted a request under the FOI Act to Defence in the following terms:
 1. *Documents related to FOI application 098/23/24*
 2. *Latest versions of directives, instructions, orders, policies, etc relating to use of social media by defence personnel.*
3. On 27 October 2023, Defence wrote to the applicant seeking clarification in relation to Item 1 of the request. On 29 October 2023, the applicant provided the requested clarification.
4. On 31 October 2023, Defence administratively released the documents in relation to Item 1 of the applicant's request.
5. Defence continued to process the request in accordance with the terms outlined in paragraph 1.
6. On 5 February 2024, the Office of the Australian Information Commissioner (OAIC) issued a direction to make a revised decision under section 55G [revocation or variation of access refusal decision] of the FOI Act by 26 February 2024.

Scope of external review

7. Noting the OAIC's correspondence of 5 February 2024, five (5) documents matching the scope of the applicant's request are the subject of the external review.
8. The purpose of this correspondence is to provide the applicant with a revised decision under section 55G [procedure in IC review – revocation or variation of access refusal decision] of the FOI Act.

FOI decision maker

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

Documents identified

10. I have identified 5 documents as falling within the scope of the request.
11. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

12. Signatures 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.

Revised Decision

13. I have decided to:
 - a. release two (2) documents in full;
 - b. partially release three (3) 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 irrelevant or exempt under section 47E(d) [public interest conditional exemptions – certain operations of agencies] of the FOI Act; and
 - c. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

14. 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 from relevant personnel within the Governance Group, the Royal Australian Navy, Australian Army and Royal Australian Air Force.

REASONS FOR DECISION**Section 22 – Access to edited copies with exempt or irrelevant matter deleted**

15. 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.
16. The documents contain exempt material and information that does not relate to the request.
17. 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(d) –Public interest conditional exemptions – certain operations of agencies

18. 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.

19. 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.

20. In the case of 'ABK' and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner (IC) found that where the direct 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.

21. I am satisfied that were the contact details of Defence personnel 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 and email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.

22. The Guidelines provide, at paragraph 6.120, 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 direct contact details within the documents are not publicly available and that more appropriate communication channels are already available, I am satisfied that release of the information could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.

23. Accordingly, I am satisfied that the material contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations - section 47E(d)

24. 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.

25. 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.*
26. 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).
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 management function of an agency; and
 - the personnel management function of an agency.
28. 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, email addresses and phone numbers of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of Defence personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.
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 section 47E(d) of the FOI Act.
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.



Luke
Decision Maker
Governance Group
Defence
14 February 2024