



DEFENCE FOI 544/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by Julie Anderson (the applicant), for access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

I'm requesting a full unredacted copy of the October 2023 minutes of the Human Research Ethics Committee for Defence and DVA.

Background

2. On 23 November 2023 the applicant submitted a request under the FOI Act to the Department of Veterans' Affairs (DVA) in the following terms:

I'm requesting a full unredacted copy of the October 2023 minutes of the Human Research Ethics Committee for Defence and DVA.

3. On 11 December 2023 the Department of Defence (Defence) accepted transfer of the request, in accordance with section 16 [Transfer of requests] of the FOI Act.
4. On 18 December 2023 Defence wrote to the applicant seeking extension of time until 22 January 2024, in accordance with section 15AA [Extension of time with agreement]. The applicant did not respond to this correspondence.
5. On 22 January 2024 Defence formally consulted with third party individuals, in accordance with section 27 of the FOI Act [Consultation – business documents].

FOI decision maker

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

Documents identified

7. I have identified one document as falling within the scope of the request.

Exclusions

8. Signatures, phone numbers and duplicates of documents that fall within the scope of the FOI request are excluded. Defence has only considered the final version of the document.

Decision

9. I have decided to partially release the document, in accordance with section 22 [Access to edited copies with exempt or irrelevant matter deleted], on the grounds that material is considered exempt under sections:
 - a. 47C [Public interest conditional exemptions – deliberative processes] of the FOI Act;
 - b. 47E [Public interest conditional exemptions – certain operations of agencies] of the FOI Act; and
 - c. 47F [Public interest conditional exemptions – personal privacy] of the FOI Act.

Material taken into account

10. 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. Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. responses received from third party consultation.

REASONS FOR DECISION

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

11. 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. I have relied on this exemption to provide you with a redacted copy of the document relevant to your request.
12. Upon examination of the document, I have identified that it contains exempt material and information (phone number and signatures) that I consider do not relate to the terms of your request. Where applicable, I have exempted this material from disclosure.
13. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the document to you in an edited form.

Section 47C – Public interest conditional exemptions - deliberative processes

14. Section 47C(1) of the FOI Act states:
 - (1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*
 - (a) *an agency; or*
 - (b) *a Minister; or*
 - (c) *the Government of the Commonwealth.*
15. I examined the document and identified material in the nature of, or relating to opinion, advice or recommendations prepared for the purposes of the deliberative processes involved in the functions of the agency. Release of the material identified as deliberative matter would, or could reasonably be expected to harm, or otherwise impede current and future projects being considered by Defence and DVA.

16. Section 47C(2)(b) of the FOI Act provides that deliberative matter does not include purely factual material. The Guidelines provide:

6.70 [p]urely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

17. I am satisfied that the document contains material that meets the definition of deliberative material. Where the content is purely factual, it is embedded in, or intertwined with the deliberative content and cannot be excised.

18. Accordingly, the information is exempt under section 47C of the FOI Act.

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

19. 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.*

20. The Guidelines provide that:

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

...

6.109 In some circumstances it may be appropriate to address concerns about the work health and safety impacts of disclosing public servants' personal information (such as names and contact details) under s 47E(c).

21. The document contains the personal details of Defence personnel that are not publicly available. Disclosing the details could reasonably be expected to have an adverse effect on the health and wellbeing of the individuals. There is a reasonable expectation that the personal details could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of Defence personnel. Consequentially, disclosure could reasonably be expected to substantially adversely impact the staff management function of Defence in maintaining workplace health and safety standards.

22. I am satisfied that the identified material is unsuitable for disclosure under section 47E(c) of the FOI Act.

23. 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.*

24. The Guidelines provide that:

6.115 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...
25. There is material within the document that would, or could, reasonably be expected to have a substantial adverse impact on the proper and efficient conduct of Defence. Release of this material would disclose information about processes, methods or conduct that is not otherwise well-known, and which would impede proper and efficient operations.
26. Human Research Ethics Committees play a central role in facilitating ethical research. The Departments of Defence and Veterans' Affairs Human Research Ethics Committee (the Committee) scrutinises the methodologies and operation of research programs to provide expert, independent advice to the researchers. The document details the management of ethical matters and how the Committee scrutinises programs to ensure compliance and includes decisions and recommendations made by the Committee. It is reasonable to expect that disclosure of the identified material could impede the proper and efficient conduct of the Committee, and by extension, the proper and efficient conduct of Defence.
27. Additionally, consultation with third parties identified material that could prejudice the conduct of matters relating to the Veterans' Medicines Advice and Therapeutics Education Services (MATES) program. Disclosure could inhibit the free exchange of information between the Committee and third parties. All Commonwealth agencies have a responsibility to properly manage and safeguard private and confidential information, especially that pertaining to individuals or businesses.
28. It is reasonable to expect that disclosure may be detrimental to the efficient operations of the Committee, and the broader agency, including that disclosure could impact the effective management of information shared in confidence. I am satisfied that the outcome could reasonably be expected to substantially and adversely affect the proper and efficient conduct and operations of Defence.
29. Paragraph 6.112 of the Guidelines requires that I 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.' The location of the meeting and workforce within the document are not publicly available and more appropriate communication channels are already available. I am satisfied that release of this information could not reasonably be expected to lead to an efficient change in Defence's processes.
30. Further, in making this assessment, I note that the Terms of Reference, Standard Operating Procedures, and Administrative Guidelines for the Committee are publicly available. These documents establish and describe the role and operations of the Committee. In contrast, the document details specific Committee operations, including how decisions and/or recommendations are made that are not well known. I am satisfied that release could not reasonably be expected to lead to an efficient change in Defence's processes.
31. Accordingly, I am satisfied that the information contained within the document is conditionally exempt under section 47E of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

32. 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).

33. The FOI Act shares the same definition of ‘personal information’ as the *Privacy Act 1988* (Cth). The Guidelines provide:

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.

34. I found that the information in the document contains personal information of other persons. 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; and

35. I found that the specific personal information listed in the document is not well known, the individuals whose personal information are 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.

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

Public interest considerations - sections 47C, 47E and 47F

37. 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.

38. 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.*

39. Disclosure of the information would not increase public participation in the Defence process nor would it increase scrutiny or discussion of Defence activities (as required by section 3(2) [Objects] of the FOI Act).
40. 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.
41. 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 personnel management function of an agency;
 - the management function of an agency;
 - an agency's ability to obtain confidential information; and
 - an agency's ability to obtain similar information in the future.
42. It is in the public interest that Defence undertakes its functions in a transparent and proper manner, and that Defence efficiently and productively operates with regard for the ethical principles that guide research programs. I consider that disclosing information about specific deliberations by the Committee limits Defence's ability to effectively administer research programs and obtain confidential information. Additionally, I consider that disclosure could expose Defence management functions and would reasonably be expected to prejudice the proper and efficient conduct of operations.
43. Defence has an obligation to protect the privacy of third parties. As established above, I consider that there is strong public interest in maintaining confidentiality of the personal information of individuals and businesses included within the document. I find that the public interest in protecting this information outweighs the public interest in releasing this information.
44. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. As established above, releasing the personal details of Defence personnel would reasonably be expected to prejudice the rights of an individual to privacy, and the personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate liaison with the public, through established processes that do not unduly pull resources from other tasks. I therefore consider that the public interest against disclosing the personal details of Defence personnel outweighs the public interest in release.
45. While I consider that the release of information removed under section 47F of the FOI Act may be of some interest to the applicant, disclosure would not inform public debate on any matter of public importance in a meaningful way, nor would it promote effective oversight of public expenditure. In my view, it would be contrary to the public interest to disclose personal information of third parties. The public interest is better served in protecting the privacy of individuals' personal details contained within the documents from release to the public.

46. In considering the public interest factors, I have given weight to, and have regard for, information about the Committee and the MATES program that is publicly available, including through Commonwealth websites, and the media. On balance, I have determined that the public interest against disclosing details about the procedural and operational functions of Defence outweighs the public interest in release.
47. I am satisfied that the public interest factors against disclosure outweigh the factors for disclosure. On balance, it is against the public interest to release the identified information to you. I find the material to be exempt under sections 47C, 47E and 47F of the FOI Act.

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