



DEFENCE FOI 483/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by Simon Harris (the applicant), dated and received on 26 November 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

Please provide all documentation recommending and appointing Kathryn Campbell as Deputy Commander JTF 633 in 2016 and all documents related to the end of that appointment and any notes relating to her performance in that role.

Background

2. On 12 December 2023, with the applicant's written agreement Defence extended the period for processing the request until 12 January 2024 in accordance with section 15AA [extension of time with agreement] 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 two (2) documents as falling within the scope of the request.

Exclusions

5. 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.

Decision

6. I have decided to:
 - a. partially release two 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 exempt under section 47E(d) [Public interest conditional exemptions--certain operations of agencies] of the FOI Act;
 - b. refuse part of the request where the applicant has sought access to 'any notes relating to her performance in that role' (Item 2) under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
 - c. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

7. 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 on document searches conducted by Defence People Group and Army.

REASONS FOR DECISION

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

8. 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.
9. The documents contain exempt material and information that does not relate to the request.
10. 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 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

11. Section 24A(1) of the FOI Act states:
 - (1) *An agency or Minister may refuse a request for access to a document if:*
 - (a) *all reasonable steps have been taken to find the document; and*
 - (b) *the agency or Minister is satisfied that the document:*
 - (i) *is in the agency's or Minister's possession but cannot be found; or*
 - (ii) *does not exist.*
12. Paragraph 3.94 of the Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(1):

...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...
13. To ensure that all reasonable steps have been taken in relation to this request, every reasonable avenue of locating potential documents matching Item 2 have been exhausted.

14. Document searches were conducted by personnel within the Defence People Group and Army using search terms specific to Item 2 of the request including 'Kathryn Campbell', 'perform', 'Appoint Deputy Commander', 'JTF 633', '2016' and 'Kathryn Campbell JTF 633' on the Defence Records Management System, Objective and PMKeyS. No records were found matching the applicant's scope.
15. I am satisfied that all reasonable steps have been taken to locate the documents sought by the applicant. I am satisfied that the documents do not exist, and refuse Item 2 the request under section 24A(1) of the FOI Act.

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

16. Section 47E 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.*

17. 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.

18. 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.
19. 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, email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.
20. Additionally, I have found that the documents contain information relating to the operational processes of Defence. In order to determine if the disclosure would, or could reasonably be expected to have a substantial, adverse effect on the proper and efficient conduct of the operations of Defence, I have considered the functions of the relevant area within Defence People Group.
21. I consider that the relevant information would, or could reasonably be expected to release information about the internal workings and processes of these areas, which would impact the ability of these areas to undertake their usual functions, including the ability to have frank discussions about relevant processes. This could reasonably

be expected to prejudice the effectiveness of each area's current operations in relation to undertaking their usual functions.

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, and that there are established processes within Defence to allow line areas to undertake their usual functions, 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 information 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 interests of an individual or a group of individuals;
 - 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 direct contact details 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. Additionally, while I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of the material contained within the documents, particularly those that refer to internal processes which allow Defence to undertake its operational activities in an expected and lawful manner.
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. 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.

FURTHER INFORMATION

32. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

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Lieutenant Colonel Peter Coates

Accredited Decision Maker

Defence People Group

Department of Defence