



## DEFENCE FOI 517/23/24

### 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 4 December 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*With reference to document EC21-002242 / Directive 07/2021 disclosed in FOI 388/23/24 (Direction), please provide:*

1. *Drafts of the paper "Preparing for the Future: Key Organisational Lessons From the Afghanistan Campaign".*
2. *With reference to paragraph 7 of the Direction:*
  - (a) *all notes, minutes or other correspondence from the monthly updates; and*
  - (b) *calendar appointments, meeting invites or diary entries for the monthly updates, between Andrew Hocking and Angus Campbell.*
3. *With reference to paragraph 8 of the Direction, all correspondence, notes, emails, or other documents (such as briefing memos, papers or packs) prior to or after the briefing given by Andrew Hocking to the COSC (planned to occur in November 2021, but which may have occurred at some other time).*
4. *"Letters of support" referenced in paragraph 10 of the Direction.*

### Background

2. On 12 December 2024, Defence sought the applicant's written agreement to extend the period for dealing with this request until 2 February 2024, in accordance with section 15AA [extension of time with agreement] of the FOI Act. The applicant declined this request on the same day.
3. On 25 January 2024, in the event Defence wished to provide partial access to the documents within the scope of the applicant's request, the Office of the Australian Information Commissioner (OAIC) issued a direction to make a revised decision for partial access under section 55G [Procedure in IC review – revocation or variation of access refusal decision] of the FOI Act by 15 February 2024.

### Scope of external review

4. In view of the OAIC's correspondence of 25 January 2024, five (5) documents matching the scope of the applicant's request have become the subject of an external review process.
5. The purpose of this correspondence is to provide the applicant with a revised decision under section 55G the FOI Act.

### **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 five (5) documents that fall within Items 2(b), 3 & 4 of the scope of the request.
8. The decision in relation to each document is detailed in the schedule of documents.

### **Exclusions**

9. Mobile telephone numbers and signatures contained in the documents that fall within the scope of the FOI request, are excluded from this request. Defence has only considered final versions of documents.

### **Revised Decision under s55G of the FOI Act**

10. I have decided to:
- a. refuse access to documents in relation to Item 1 of the applicant's request, on the grounds that the documents are considered exempt under sections 33 [Documents affecting national security, defence or international relations] and 47C [Public interest conditional exemptions – deliberative processes];
  - b. refuse the request in relation to Item 2(a) of the applicant's request, under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act;
  - c. partially release one (1) document in relation to Item 2(b) of the applicant's request, 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 [Public interest conditional exemptions – certain operations of agencies] of the FOI Act;
  - d. partially release three (3) documents in relation to Item 3 of the applicant's request, 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 33 [Documents affecting national security, defence or international relations], 47C [Public interest conditional exemptions – deliberative processes], and 47E [Public interest conditional exemptions – certain operations of agencies] of the FOI Act;
  - e. partially release one (1) document in relation to Item 4 of the applicant's request, 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 [Public interest conditional exemptions – certain operations of agencies] of the FOI Act; and
  - f. remove irrelevant material in accordance with section 22 of the FOI Act.

## Material taken into account

11. 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);
  - e) advice from the Office of the Chief of the Defence Force and Mr Andrew Hocking; and
  - f) advice from Defence subject matter experts within the Afghanistan Inquiry Response Task Force (the Task Force).

## REASONS FOR DECISION

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

12. 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.
13. Documents falling under Items 1, 2(b), 3 & 4 of the applicant's request contain exempt material and information that does not relate to the request.
14. 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.
15. In addition, where a decision maker denies access to a document, section 22(1) of the FOI Act requires that they consider releasing the document with exempt matter deleted, if possible.
16. Paragraph 3.98 of the Guidelines provides that:
- ...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.*
17. Accordingly, I have considered disclosing the relevant documents that fall under Item 1 of the applicant's request with deletions, but have decided to refuse access as these documents would be meaningless and of little or no value once the exempt material is removed.

### Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

18. 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.*

19. 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...*

20. To ensure that 'all reasonable steps' have been taken in relation to Item 2(a) of the applicant's request, every reasonable avenue of locating potential documents has been exhausted. An extensive search for documents was conducted by Task Force staff within the Defence Records Management System (Objective) and other relevant Group/network drives using the search terms '*Andrew Hocking*'. Searches were also conducted by the Enterprise Committees – Chiefs of Service Committee and the Office of the Chief of the Defence Force. By way of further information, I would like to take this opportunity to highlight that Item 2(a) of the applicant's request, which refers to paragraph 7 of Directive 07/2021, directs that progress updates be provided verbally on a monthly basis. Accordingly, no records were found matching the applicant's scope.
21. I am satisfied that all reasonable steps have been taken to locate the documents sought by the applicant. I am satisfied that the documents in relation to Item 2(a) do not exist, and refuse this part of the request under section 24A(1) of the FOI Act.

### **Section 33 – Documents affecting national security, defence or international Relations**

22. Section 33(a)(ii) of the FOI Act states:

*A document is an exempt document if disclosure of the document under this Act:*

- ...
  - (a) *would, or could reasonably be expected to, cause damage to:*
    - ...
      - (ii) *the defence of the Commonwealth...*

23. In regard to the terms 'would, or could reasonably be expected to' and 'damage', the Guidelines provide:

*5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.*

*5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.*

...

5.35 *Damage to the defence of the Commonwealth is not necessarily confined to monetary damage ... However, in all cases, there must be evidence that the release of the information in question will be likely to cause the damage claimed.*

24. In regard to ‘defence of the Commonwealth’, paragraph 5.34 of the Guidelines refers to previous Administrative Appeals Tribunal (AAT) that indicate:
- a. meeting Australia’s international obligations
  - b. ensuring the proper conduct of international defence relations
  - c. deterring and preventing foreign incursions into Australian territory
  - d. protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.
25. I have identified material within the documents which would, or could reasonably be expected to, disclose the allocation of taskings both within and outside Defence as well as the approaches taken to identify risks and strategic objectives. It is challenging to generate military power and capabilities. Decisions and judgments involve a degree of trade-off and uncertainty. Revealing these issues publicly could reasonably be expected to produce adverse consequences by allowing bad actors with hostile intentions to exploit the inner workings of the Department to the detriment of the defence of Australia. In my view, the release of the relevant information would adversely impact and cause damage to the defence of the Commonwealth.
26. Accordingly, I am satisfied that the relevant information is exempt under section 33(a)(ii) of the FOI Act.

#### **Section 47C – Public interest conditional exemptions - deliberative processes**

27. Section 47C of the FOI Act states:
- (d) 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.*
28. Upon examination of the documents, I found that they contained information relating to internal processes of Defence, including how Defence engages with other business areas and portfolio holders. The Office of the Chief of the Defence Force was consulted on these documents and has supported my decision to exempt this material under section 47C of the FOI Act.
29. Furthermore, Section 47C(2)(b) of the FOI Act provides that deliberative matter does not include purely factual material. Paragraph 6.73 of the Guidelines states that:
- [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.*

30. Accordingly, I am satisfied that the relevant information meets the definition of deliberative material, and that where the content is purely factual, it is embedded in, or intertwined with the deliberative content and cannot be excised. Therefore, I have decided that the relevant information is conditionally exempt under section 47C of the FOI Act.

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

31. 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.*

32. 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.*

33. In the case of 'ABK' and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner (IC) found that where the direct contact details of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to a 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.
34. 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 locations could, therefore, reasonably be expected to prejudice the operations of Defence.
35. Paragraph 6.120 of the Guidelines provide 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 this information could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.
36. Accordingly, I am satisfied that all staff information contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

## Public interest considerations – sections 47C & 47E

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. 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).

40. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors that I find particularly relevant to this request are that the release of this information could reasonably be expected to prejudice:

- a. the protection of an individual's right to privacy;
- b. the interests of an individual or a group of individuals;
- c. an agency's ability to obtain confidential information;
- d. an agency's ability to obtain similar information in the future; and
- e. the management function of an agency.

41. 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, locations 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.

42. Additionally, while I accept that 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 specified documents, particularly where this information refers to Defence's internal and external processes which, in turn, allow Defence to undertake sensitive operational activities in a secure and efficient manner.

43. 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.
44. I am satisfied, based on the above particulars, that 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 47C and 47E(d) of the FOI Act.

**FURTHER INFORMATION**

45. 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.

**Catherine Wallis, CSM**  
Air Commodore  
Director-General  
Afghanistan Inquiry Response Task Force  
Associate Secretary Group