



DEFENCE FOI 737/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

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

Please provide full unreacted copies of the Media and Communication Policy and the Social Media Playbook.

Please provide a full unredacted copies of the documents in Defence FOI 399/23/24.

Background

2. On 1 February 2024, the applicant wrote to Defence seeking an update on a request that was submitted under the FOI Act. The applicant's original correspondence dated 21 December 2023 was not received by Defence.
3. On 2 February 2024, Defence wrote to the applicant advising that there was no record of receiving their request, and therefore requested the applicant confirm they wished to proceed with their request, noting the applicant had referred the request to the Office of the Australian Information Commissioner (OAIC). No response to this correspondence was received from the applicant.
4. On 19 February 2024, the OAIC issued a direction to make a revised decision under section 55G [Procedure in IC review – revocation or variation of access refusal decision] of the FOI Act by 19 March 2024. On 19 March 2024, Defence wrote to the OAIC seeking further time to issue a revised decision. At the time of signing, a response had yet to be received.
5. On 18 March 2024, Defence wrote to the applicant advising that their request would be processed to the terms outlined in paragraph 1, as if it was received by Defence on the applicants intended date.

Scope of external review

6. In view of the OAICs correspondence of 19 February 2024, five documents matching the scope of the applicant's request have become the subject of an external review process.
7. The purpose of this correspondence is to provide the applicant with a revised decision under section 55G the FOI Act.

FOI decision maker

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

Documents identified

9. I have identified five documents as falling within the scope of the request.

Exclusions

10. 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 under section 55G of the FOI Act

11. I have decided to:
- a. release two documents in full;
 - b. partially release three 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 sections 47E [public interest conditional exemptions - operations of agency] and 47F [public interest conditional exemptions - personal privacy] of the FOI Act;
 - c. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

12. 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 subject matter experts within the Defence News Bureau, Governance Group.

REASONS FOR DECISION

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

13. 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.
14. The documents contain exempt material and information that does not relate to the request.
15. 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

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:

...

- (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.*

17. In relation to section 47E(c) of the FOI Act, the Guidelines provide, at paragraph 6.113, that:

Where the 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 exemption in s 47E(c), namely, that:

- *an effect would reasonably be expected following disclosure*
- *the expected effect would be both substantial and adverse.*

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

19. Releasing the information identifying individuals or groups involved in a particular analysis, information detailing how information is analysed and determined to be offensive could reasonably be expected to have a substantial adverse effect on Defence's management of Social Media content. Maintaining the integrity of these processes is paramount. Releasing details concerning the determinations of offensive content could adversely affect Defence's ability to conduct future investigations if employees felt Defence lacked integrity with respect to protecting the confidentiality of investigation records; thus affecting the proper and efficient conduct of the operations of Defence.

20. Based on my consideration of the above I am of the view that release of removed content would have a substantial adverse effect on the individuals, management and assessment of personnel, and the efficient and proper conduct of the operations of Defence.

21. 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.

22. The documents contain group inbox details, the release of which would undermine the operation of established channels of communication with the public. I am satisfied that the release of this information would have a substantial adverse effect 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 internal email inbox details could, therefore, reasonably be expected to prejudice the operations of Defence.

23. Additionally, I have found that the documents contain information relating to the operational processes of Defence, particularly the methods used to assess and report offensive social media content. The documents also contain links to Defence information holdings and internal guidance and training material. 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 Governance Group.
24. I consider that the relevant information would, or could reasonably be expected to release information about the internal workings and processes of the area, which would impact the ability of these areas to undertake their usual functions, including the ability to have frank discussions about relevant processes such as reporting potentially offensive social media content. This could reasonably be expected to prejudice the effectiveness of each area's current operations in relation to undertaking their usual functions.
25. 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.
26. 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

27. 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).

28. 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.*

29. I found that the information contains personal information of a number of individuals. The documents include names and email addresses which if disclosure, could reasonably be expected to identify the third parties.
30. 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.
31. 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.
32. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E and 47F

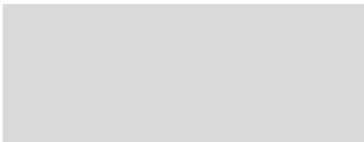
33. Section 11A(5) of the FOI Act states:
- The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.*
34. I have considered 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.*
35. 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).
36. 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;
- an agency's ability to obtain similar information in the future; and
- the management and personnel management function of an agency.

37. 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.
38. 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.
39. 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 sections 47E and 47F of the FOI Act.

FURTHER INFORMATION

40. Two of the documents, although matching the scope of this request, are not current and are no longer in use by Defence. These documents are marked accordingly in the Schedule of Documents for the applicant's information.



Luke
Decision Maker
Governance Group
Department of Defence

3 April 2024