



DEFENCE FOI 577/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

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

I request a copy of the "Final Report" referred to in section 10 of the 12th Quarterly Report of the Afghanistan Inquiry Implementation Oversight Panel, such should be dated on or about 8 November 2023.

See Document 1 of FOI 500/23/24, section 10.

Background

2. On 5 January 2024, Defence wrote to the applicant seeking their agreement to extend the period for dealing with the request from 21 January 2024 until 20 February 2024 in accordance with section 15AA [extension of time with agreement] of the FOI Act. On 8 January 2024, the applicant refused this request.

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 one document as falling within the scope of the request.

Exclusions

5. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers 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 refuse access to one document on the grounds that the document is considered exempt under section 47C [Public interest conditional exemptions – deliberative process] 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 document in issue;
 - c. relevant provisions of the FOI Act; and

- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

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. 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.
10. 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.*
11. I have considered disclosing the document to you with deletions, but have decided to refuse access to the document as it would be meaningless and of little or no value once the exempt material is removed.

Section 47C – Public interest conditional exemptions - deliberative processes

12. 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.
13. Upon examination of the document, I have identified deliberative matter – that is the nature of, or relating to either opinion, advice or recommendation that has been obtained, prepared or recorded; or a consultation or deliberation that has taken place, in the course of, or for the purpose of a deliberative process.
14. The Afghanistan Inquiry Implementation Oversight Panel Final Report contains opinions, advice, recommendations and supporting material that was gathered through consultation and deliberation, and created for the purpose of assisting the Deputy Prime Minister to determine whether sufficient actions has been taken by the Department of Defence to implement the Afghanistan Inquiry Report. The document is under consideration by a Minister at the date of the request.
15. Section 47C(2)(b) of the FOI Act provides that deliberative matter does not include purely factual material. The Guidelines, at paragraph 6.73 state 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,

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

Public interest considerations - section 47C

18. 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.

19. 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.*

20. In my view, disclosure of this information would go some way to increasing public participation in the Defence process (section 3(2)(a) of the FOI Act), and also increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

21. 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:

- an agency's ability to obtain confidential information;
- an agency's ability to obtain similar information in the future;
- the management function of an agency; and
- the personnel management function of an agency.

22. The Oversight Panel is expected to provide full and frank views to the Minister on the subject matter in order to inform Ministerial decision-making. Were such material to be made public this could reasonably be expected to prejudice the ability of Defence to obtain such frank opinion and advice in the future. Given the document concerns a significant reform program, the inability to obtain frank opinions and advice could reasonably be expected to prejudice the operations and personnel management of Defence.

23. While I accept there is public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining confidentiality of the material contained within the document, particularly those still under consideration by a Minister.
24. 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.
25. 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 47C of the FOI Act.

AIRCDRE Catherine Wallis
Accredited Decision Maker
Associate Secretary Group
Department of Defence