



Senator the Hon Marise Payne
Minister for Defence

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7800

FOI MINDEF 003/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by Mr Ben Fairless dated 19 October 2016, under the *Freedom of Information Act 1982* (FOI Act), for access to:

“...A copy of all inbound and outbound chats in the 7 days prior to this request that was sent or received from the minister using any of the below applications:

- *WhatsApp*
- *Facebook Messenger*
- *Signal*
- *Telegram*
- *Grindr*
- *Scruff*
- *Tinder*
- *Email Accounts without a .gov.au email address?*

Background

2. On 25 November 2016, I advised the applicant that the request, in its current form, was at risk of being refused under section 24 [unreasonable diversion of resources] of the FOI Act. As an agreement has not been reached on a refined scope, I have decided to proceed to a decision based on the original scope.

FOI decision maker

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

Decision

4. I have decided to refuse access to the request under subparagraph 24A(1)(b)(ii) [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

Material taken into account

5. In making my decision, I had regard to:
 - a. the terms of the request;
 - b. relevant provisions in the FOI Act;
 - c. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
 - d. the Minister.

Section 24A

6. Section 24A of the FOI Act allows Ministers to refuse FOI requests if the documents cannot be found, do not exist or have not been received. Specifically, subsection 24A(1) states that:

'An agency or Minister may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the documents; 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.'*

Official documents of a minister

7. I note that the right of access to documents extends to the 'official documents of a minister. Paragraph 2.45 of the Guidelines state that *'an official document of a minister means a document in a minister's possession in their capacity as a minister, being a document that relates to the affairs of an agency.'*

Searches undertaken

8. Taking into account paragraph 2.45 of the Guidelines, searches of the Minister's records were conducted and no documents relevant to the scope of the request were found.

Review Rights

AUSTRALIAN INFORMATION COMMISSIONER

9. Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: enquiries@oaic.gov.au
 Phone: 1300 363 992
 Fax: 02 9284 9666
 Post: GPO Box 2999
 Canberra ACT 2601

COMPLAINTS

10. You may complain to the Information Commissioner or the Commonwealth Ombudsman about an action taken by the Minister in the exercise of her power or the performance of her functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Information Commissioner, you can do so using the details above. Alternatively, the contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)
Fax: 02 6276 0123
Post: Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601



Adviser to Minister for Defence

18 April 2017