



Australian Government
Department of Defence

Reference: BN13668351

FOI 345/19/20 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by Mr Stuart McCarthy under the *Freedom of Information Act 1982* (FOI Act), for access to:

“In accordance with the FOI Act, I hereby request to be provided with documents relating to the genesis and development of this initiative, from 1 July 2018 to 31 December 2019, including internal Defence documents and correspondence between the Department and the Office of the Minister for Defence Personnel and Veterans Affairs during that period. I request to be provided with documents including, but not limited to: letters, emails, briefings, file notes and text messages between senior Defence officials and staff from the Minister's office”

Background provided by applicant

On 22 July 2019, the Canberra Times reported (according to an anonymous spokeswoman):

"... the federal government has committed \$2.1 million to a new initiative to support veterans who are concerned about having taken the anti-malarial drugs mefloquine or tafenoquine."

"This initiative will deliver a national program that will provide concerned veterans with the option to receive a comprehensive health assessment with a general practitioner to identify service-related illness, disease and injury."

The same story quoted Department of Veterans Affairs Secretary Liz Cosson, who stated that the initiative was being developed in response to affected veterans who were "aggrieved" by medical mistreatment.

excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents, and documents sent to and from you. Furthermore, Defence only considers final versions of documents.

FOI decision maker

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

Documents identified

3. I identified 13 documents as matching the description of the request.

4. The decision in relation to each document is detailed in a schedule of documents.

5. I have added an FOI reference number and Item/document number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:
- a. release 2 documents in full;
 - b. partially release 11 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 [public interest conditional exemptions – operations of an agency] and section 47F [public interest conditional exemptions–personal privacy] of the FOI Act;
 - c. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

7. In making my decision, I had regard to:
- a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions in 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 third parties.

Reasons for decision

Section 47E – Certain operations of agencies

8. On review of the documents, I identified contact information of non-executive level employees of the Department of Veteran Affairs (DVA). I found the material to be conditionally exempt under sections 47E(c) and 47E(d) of the FOI Act which state:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the follow: ...

(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 an agency.

9. The Australian Information Commissioner has issued Guidelines under section 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. In relation to section 47E(c) of the FOI Act, the Guidelines explain 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 whether:

- a. an effect would reasonably be expected following disclosure; and
- b. the expected effect would be both substantial and adverse.

10. For this exemption to apply, the documents must relate to either:

- (a) the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; and

(b) the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

11. DVA's role is to provide support and information to veterans and their families, Australian Defence Force personnel and other categories of people. The services and support which DVA provides include pensions and compensation, health care, rehabilitation and counselling services. I consider it to be paramount that DVA is able to continue to provide these services and to carry out the other legislative functions, administrative and operational processes required of them. Certain processes and specific channels of communication have been implemented by DVA to enable clients and other relevant stakeholders to contact the Department in a way that ensures all Departmental resources are managed as efficiently as possible.

12. Release of employee names and contact details, could adversely affect the Departments ability to manage the welfare of DVA staff if established lines of communication are bypassed. DVA personnel may feel targeted, insulted and/or harassed presenting challenges which could affect the Departments ability with regards to the management and retention of its personnel.

13. It is reasonable to expect that this would have a substantially adverse effect on the management of personnel within DVA and as such I consider the material conditionally exempt under section 47E(c).

14. In relation to section 47E(d) of the FOI Act, paragraph 6.123 of the Guidelines advise that, where the document relates to certain operations of agencies, the decision maker must address whether 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. If DVA's established lines of communication are bypassed could then be it is reasonable to expect that this would disrupt employees undertaking their expectant duties and adversely affect the operations of the Department.

Section 47F – Personal Privacy

15. Upon examination of the documents, I identified names, email addresses and employment details of persons other than the applicant. As a person's identity could become apparent or reasonably ascertainable from the identified information, I have decided that this information constitutes the definition of personal information.

16. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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 documents;
- 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 individual.

17. Against the criteria, I found:

- a. the specific personal information listed is not well known;

- b. the individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt in the documents; and
- c. the information is not readily available from publicly accessible sources.

18. With reference to the above, I consider that names, email addresses and employment details of personnel other than the applicant would be an unreasonable disclosure and is conditionally exempt under section 47F(1) of the FOI Act.

19. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest. My public interest considerations are set out at paragraph 19.

Sections 47F - Public interest considerations

20. In finding that the documents contain conditionally exempt material, I am therefore required to consider whether it would be contrary to the public interest to give the applicant access to conditionally exempt documents at this time (s11A(5)).

21. I have balanced the public interest factors favouring disclosure – disclosure of the requested documents may promote some of the objects of the FOI Act – against the public interest factors against disclosure. Disclosure could reasonably be expected to:

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

22. In this case I give greater weight to factors against disclosure. In particular, I consider there is also a strong public interest in maintaining a safe work environment for all employees as well as protecting an individual's right to privacy particularly through the ability to limit contact after hours.

23. None of the factors listed in section 11B(4) [*Irrelevant factors*] were taken into account when making my decision.

24. Noting all of the above, I consider that, on balance the public interest factors against disclosure outweigh the factors for disclosure and consider it would be contrary to the public interest to release the information considered exempt under sections 47E and 47F of the FOI Act.

Further Information

25. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

Paul Naveau
Accredited Decision Maker
JHC

Feb 2020