



Australian Government
Department of Defence

Reference: BN20581819

FOI 045/20/21 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

“For each of the last 3 financial years I request the following:

- The number of sexual abuse claims finalised [sic] by the ADF,*
- The number of claims finalised [sic] that were found to be in favour [sic] of the victim,*
- The total amount paid out by the ADF to these victims, and*
- The number of ADF personnel who as perpetrators of sexual abuse were disciplined or given an option of resigning.”*

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. Given the broad terms of the request and the fact that Defence has not read the terms of the request narrowly, it was originally anticipated that the scope of the request could be very large. Following negotiation about the terms of the request with the applicant, I identified five documents (22 pages) as matching the description of the request, which are listed in the attached Schedule of Documents.

4. One document, matching the scope of Items 1, 2 and 3 of the request, was created under section 17 of the FOI Act. Information was extracted from other documents to create the document for the purposes of this request.

5. The decision in relation to each document is also detailed in the Schedule of Documents. I have also added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

- a. release three documents in full; and
- b. partially release two 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 47F [public interest conditional exemptions-personal privacy] of the FOI Act.

7. Material considered irrelevant to the scope of the request has been removed in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

8. 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);
 - e. the specific terms of the request in which the applicant seeks ‘the number of *ADF personnel*’.

Reasons for decision

Section 17 – requests involving use of computers

9. Although the initial scope of the applicant’s request was very broad, Defence considered that it was possible to create a written document that would contain the information sought by the applicant in relation to Items 1, 2 and 3 of the request. I consider that the production of this document has enabled Defence to meet the terms of Items 1, 2 and 3 of the request without an unreasonable diversion of Commonwealth resources. It has also avoided the unreasonable disclosure of personal information about any of those individual claimants whose aggregated data was used to produce the document.

Section 47F – personal privacy

10. Section 47F(1) of the FOI Act states that ‘*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)*’.

11. ‘*Personal information*’ has the same meaning as in the *Privacy Act 1988*, which 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.

12. I found information contained in two of the documents at Item 4, Serials 3 and 4, such as mobile telephone numbers and names of personnel, is personal information that would reasonably identify an individual, and satisfies the definition of ‘*personal information*’ in section 4 of the FOI Act. Noting the very sensitive nature of the information that underpins the numbers produced for the request, I have also redacted the desk telephone numbers of the staff concerned.

13. The test of ‘*unreasonableness*’ implies a need to balance the public interest in disclosure of government-held information and protecting the privacy of individuals. For the reasons set out below I found that the disclosure of the above mentioned ‘*personal information*’ would be considered to be unreasonable.

14. The Guidelines note that ‘*the personal privacy exemption is designed to prevent the ‘unreasonable’ invasion of third parties’ privacy*’. In accordance with section 47F(2) of the

FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to:

- 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. any other matters that the agency considers relevant.

15. Against those criteria, I found that:

- a. the specific information and details relating to the individuals is not well known to the broader community;
- b. the specific information is not readily available from publicly accessible sources;
- c. the specific information is information that individuals would not wish to have disclosed without their consent; and
- d. that while information such as desk telephone numbers are often released in FOI requests, there is a special sensitivity in this case. Dealing with sensitive matters such as those that the data was collected about carries a significant burden of vicarious trauma for staff, as well as for those involved as 'first responders'. It is for this reason, among others, that there is a process for reporting and dealing with reports of such matters that is followed carefully to ensure an approach that is trauma-informed, to support victims and also structured to support the staff working with those issues. Publishing the contact details of the officers broadly, would carry a genuine risk of contacts on distressing subject matter outside the normal protocols, that are in place to assist both callers and staff to refer and deal with the matters appropriately.

16. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

Public interest considerations – section 47F

17. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines provided by the Information Commissioner, together with a range of factors that favour access to a document set out in subsection 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

18. Disclosure of the personal information may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, it would not increase scrutiny or discussion of government activities nor would it inform public debate on any matter of public importance in any meaningful way. Additionally, disclosure of the information would not promote oversight of public expenditure.

19. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making my decision.

20. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure. I therefore have decided that it would be contrary to the public interest to release the information considered exempt under section 47F(1) of the FOI Act.

Further Information

21. I note that numerous searches were conducted at the outset of this request, which involved going through records whereby the outcome resulted in identifying four documents after the scope was refined.

Context Statement

22. The numbers provided in the document matching Items 1, 2 and 3 are collected in relation to claims which, though current in terms of resolution, may deal with historical abuse matters. The figures provided in the remaining documents relate to matters current at the time the documents were produced.

23. For additional context, the document created specifically for Items 1, 2, 3 refers specifically to legal claims for compensation. The other documents for Item 4 refer to reports of abuse which may or may not have been accompanied by a claim for compensation. It is important to note that the term 'claim' in the applicant's request has not been interpreted in the narrow sense as referring only to a legal claim for compensation, rather, the documents considered for release reflect the broader concept of a claim as including an accusation about an event.

24. It is noted that the numbers in the Item 4 documents may overlap, as they reflect the number of members serving at a point in time about whom a report has been made. Noting the time that resolution of such a matter may take, it is possible that the same member might appear across more than one of the reports.

25. Finally, I should note that the data for the final year sought by the applicant appears incomplete at this time, with Item 4 Serial 4 still having draft markings and a portion of the relevant data table has not yet been populated at this time in the reporting year.

Ingrid Singh
Accredited Decision Maker
Defence Legal

August 2020