



DEFENCE FOI 261/21/22 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by Ben McKelvey under the *Freedom of Information Act 1982* (FOI Act) for access to:

“Access to a document in which the number of EKIA due to Australian operations in Afghanistan has been collated and similar documentation which includes the number of civilian and collateral deaths.”

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 no documents as matching the description of the 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. the content of the identified documents in issue;
 - c. relevant provisions in 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).

Section 24A(1) - Requests May Be Refused

6. Section 24A(1) of the FOI Act states:

Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

(1) An agency or Minister may refuse a request for access to a document if:

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

7. The Guidelines, at paragraphs 3.85 to 3.94 provide guidance on the steps that should be taken by Agencies to find a document and the considerations for refusing a request if documents cannot be found or do not exist.

8. To ensure that 'all reasonable steps' have been taken in this request, every reasonable avenue of locating the documents has been exhausted. The details of these searches are outlined below.

9. Headquarters Joint Operations Command, in consult with relevant areas of the Department, conducted searches on Objective, Defence's document and record management system, servers containing historic operational data and other relevant repositories. No records were located relating to, or containing, aggregated lists of enemy killed in action or the number of civilian and collateral deaths.

10. I am satisfied that 'all reasonable steps' have been taken to locate the documents sought by the applicant. I am satisfied that the documents cannot be found or do not exist, and refuse access to this request under section 24A(1) of the FOI Act.



Colonel Christopher Austin
Accredited Decision Maker
Headquarters Joint Operations Command