



DEFENCE FOI 521/22/23

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

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

Correspondence, Ministerial Submissions, Minutes, records of conversations, emails, Signal, WhatsApp, Skype, Teams or text messages' generated between 01 October 2022 and 2023 to date, relating to potential impacts of the Government's planned and then actual decision to allow persons on temporary protection visas (TPVs/SHEVs) to apply for permanent visas (now known as RoS 851) on JTF 639; and

Correspondence, Ministerial Submissions, Minutes, records of conversations, emails, Signal, WhatsApp, Skype, Teams or text messages' generated between 01 October 2022 and 2023 to date, relating to potential impacts of the Government's failure to re-designate Nauru as a regional processing country (through the lapse of the designation) on JTF 639.

Background of request

2. On 22 February 2023, the applicant submitted a request under the FOI Act to Defence in the following terms:

All documents generated between 01 October 2022 and 2023 to date, including internal and external correspondence sent and received, relating to potential impacts of government decisions on JTF 639.

3. On 2 March 2023, Defence initiated a 'request consultation process' as set out under section 24AB of the FOI Act, as Defence considered that a practical refusal reason existed in relation to the request, as worded. On the same day, the applicant revised the scope of the request, as outlined in paragraph one (1).

4. On 17 March 2023, Defence sought a 14-day extension of time under section 15AA of the FOI Act, to finalise processing the FOI request.

5. On 20 March 2023, the applicant agreed to the extension of time.

FOI decision maker

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

Documents identified

7. No documents have been identified as matching the description of the request.

Decision

8. I have decided to refuse the request under section 24A [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

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

Reasons for decision

Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

10. Section 24A(1) of the FOI Act states:
 - (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.*
11. Paragraph 3.94 of the Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(1):

...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...
12. To ensure that “all reasonable steps” have been taken in relation to this request, every reasonable avenue of locating potential documents matching the request has been exhausted.
13. Extensive searches have been conducted by the Vice Chief of the Defence Force Executive Command Support Branch, Strategic Policy and Industry Group - International Policy Division and relevant branches within Headquarters Joint Operations Command using the key terms of the applicants request. This includes both electronic, hard copy files and all other common drives of the Defence record keeping systems.
14. 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 the request under section 24A(1) of the FOI Act.

CMDR Gemma Mountney
Accredited Decision Maker
Headquarters Joint Operations Command