



Australian Government
Department of Defence

DEFENCE FOI 170/20/21 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT – REVISED DECISION

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

“...documents relating to the ignition of the Orroral Valley fire by an Army MRH-90 Taipan helicopter in the ACT in January, 2020. This includes logs, radio traffic, passenger list, and location data etc from the helicopter in the hours before and after the ignition. I advise I am not interested in duplicate copies of documents or documents that have already been publicly release or media releases, media articles or media statements.”

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.

3. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Documents identified

4. I identified five documents as matching the description of the request.

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

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

Decision

7. I have decided to:

- a. release two documents in full;
- b. partially release three 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(c) [public interest conditional exemptions-certain operations of agencies] of the FOI Act; and
- 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

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; and
- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reasons for decision

Section 47E - Certain operations of agencies

9. On review of the documents, I found that they contained information relating to Australian Defence Force assistance to bushfires in the ACT region in 2019-2020. I found the material to be conditionally exempt under section 47E(c) of the FOI Act.

10. Section 47E(c) of the FOI Act states:

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

- c. have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*

11. The name and rank of Defence personnel have been redacted from the documents except where this information is already known. Whilst personnel names are generally disclosed, names in this instance have been exempted because of the sensitive nature of work the individuals perform.

12. Defence has a responsibility to its personnel with work health and work safety being an important consideration. In relation to this matter, and the reason for this revised decision, the release of personnel names in this instance has had a substantial adverse effect on the management of personnel. As the Department has a responsibility to protect its staff working in the operational environment, these names have now been removed from the documents approved for release.

13. For the reasons set out above, I have decided that some of the material is conditionally exempt under section 47E(c) of the FOI Act. My public interest considerations are set out below.

Public interest considerations – Section 47E(c)

14. I have found that the identified documents contain material that is conditionally exempt under section 47E(c) of the FOI Act.

15. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines, together with a range of factors that favour access to a document set out in section 11B(3) of the FOI Act. Disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource.

16. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- a. The fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct;
- b. Security, law enforcement, public health or public safety.

17. Against these factors, I find that individuals on social media platforms have the potential to treat the personnel involved in the incident unfairly, which substantiates the risk to work health and work safety of these personnel. Failure of the Department to take action in this case will result in further unfair treatment of our personnel and substantial adverse effect on the management or assessment of personnel.

18. On balance, I consider that the release of this information is not in the interest of the public at large. The public interest is better served in this case by removing details of the personnel involved in the incident from public disclosure.

19. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47E(c) of the FOI Act.

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

Further Information

21. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

Context Statement

22. The initial decision in relation to this FOI application has been revised as additional information pertaining to the documents came to light on 21 January 2021.

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Alana Kahl
Accredited Decision Maker
Associate Secretary Group