



Reference: BN13949461

FOI 351/19/20 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

“1. Documents detailing the rank, duties, numbers and locations and appointment dates of Defence Force Liaison officers stationed in state fire service or emergency co-ordination centres and whether they were on duty during the Christmas/New Year period.

2. Communications with the Prime Minister or the Minister for Drought, Natural Disaster and Emergency Management or their staff about the appointment of and role of the Defence force Liaison officers referred to above.

Please confine the search in relation to items 1 & 2 to 1 November 2019 to the date of this request date.

3. Correspondence, including emails or other communications to the liaison officers advising them of the proposed deployment of 3000 reserve personnel as announced by the Prime Minister on 4 January, including any communications asking them to alert their state counterparts.

Please confine the search to 1 January 2020 to 5 January 2020.

4. Communications between the ministers’ offices and Defence and Defence and the liaison officers dealing with the failure to notify the NSW Rural Fire Service Commissioner, Shane Fitzsimons of the deployment.

Please confine the search to 4 January 2020 to 10 January.”

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 23 documents as matching the description of the request. I note that there were no documents identified which met the scope for questions two and four of your application.

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

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

Decision

6. I have decided to:
 - a. release nine documents in full;
 - b. partially release 14 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-certain operations of agencies] and section 47F [public interest conditional exemptions-personal privacy] of the FOI Act;
 - c. refuse access to documents of 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; and
 - d. 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);
 - e. advice received from officers within the department from Military Strategic Commitments Division, Headquarters Joint Operations Command, Vice Chief of the Defence Force Group and Joint Operations Support Staff intimately involved in the command and management of the ADF's commitment under Operation BUSHFIRE ASSIST; and
 - f. consultation with other Commonwealth and State Agencies.

Reasons for decision

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

8. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. Upon examination of the document I identified material which I consider could reasonably be regarded as irrelevant to the request. As such I have prepared an edited copy of the document with this irrelevant material deleted.

Section 47E – Certain operations of agencies

9. Subsections 47E(c) and 47E(d) of the FOI Act state:

A document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to:

...

(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 the agency.

10. In relation to subsection 47E(c) of the FOI Act, the Guidelines advise that, where the document relates to management of personnel, the decision maker must address whether:

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

11. I considered whether:

- a. prejudice could reasonably be expected to occur to the effectiveness of the procedures or methods of the agency; and
- b. the disclosure of these documents at this time would, on balance, be contrary to the public interest.

12. Upon examination of the documents, I found that information that warrants a claim for exemption under subsection 47E(c) of the FOI Act as they reveal the personal details of reservists supporting Operation Bushfire Assist. It would be unreasonable in the circumstances to fully identify them without specific approval from each individual named.

13. The release of these documents may prejudice the Department's ability to attract and retain reservist personnel, particularly its ability to provide short-notice Defence Aid to the Civil Community under 'Call For' (volunteer) arrangements in the future. Assurances that the personal privacy of individuals is effectively protected unless they agree to public release is core to the conduct of Defence business.

14. In relation to subsection 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.*

15. Upon examination of the documents, I found some contained information concerning the proper and efficient conduct of the operations of Defence, specifically points of contact related to Defence's operational activities.

16. Releasing information identifying points of contact could adversely affect Defence's ability to efficiently conduct similar future operations as this information is managed closely to ensure that only relevant material and contact is made during high-tempo periods.

17. Taking the above into consideration, I am of the view that release of the information would have a substantial adverse effect on Defence's management of personnel and the proper and efficient conduct of the operations of Defence. The information is therefore conditionally exempt under section 47E of the FOI Act.

Section 47F - Personal privacy

18. Upon examination of the documents, I identified information, specifically names and personal information of third parties other than the applicant.

19. In making my decision, I considered whether:

- a. the document contained personal information;
- b. the disclosure of the personal information would be unreasonable; and
- c. the disclosure of this information would, at this time, be contrary to public interest.

20. As a person's identity is apparent or reasonably ascertainable from the identified information, I have decided that it constitutes personal information.
21. In determining whether release of the above personal information is unreasonable, I took into account, inter alia:
- 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 within the document; and
 - c. the availability of the information from publicly accessible sources.
22. Against these criteria, I found:
- a. the specific identified information is not well known;
 - b. the persons to whom the information relates is not widely known to be (or to have been) associated with the matters dealt with in the documents; and
 - c. the specific identified information is not available from publicly accessible sources.
23. With reference to the assessment above, I consider the release of personal identifying information of third parties, other than the applicant, would be an unreasonable disclosure of personal information and therefore find part of document eight conditionally exempt under subsection 47F(1) of the FOI Act.

Public interest considerations – Sections 47E and 47F

24. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed 'unless (in the circumstances) access to the documents at the time would, on balance, be contrary to the public interest'.
25. I considered that disclosure will promote some of the objects of the FOI Act, as information held by the Government is a national resource. However disclosure of the information identified as exempt in this document would not increase participation in debate on a matter of public importance, nor would it increase scrutiny or discussion of Defence activities. In fact release of the information could reasonably be expected to cause harm to the privacy of the individuals identified within the document and have an adverse impact on Defence's proper conduct of operations in the public interest.
26. 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 protection on an individual's right to privacy;
 - b. the interests of an individual or a group of individuals;
 - c. an agency's ability to obtain confidential information;
 - d. an agency's ability to obtain similar information in the future; and
 - e. the efficient and effective management of an agency.
27. 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 sections 47C, 47E and 47F of the FOI Act.

28. In coming to the above decision I considered factors outlined in section 11B(4) [irrelevant factors] of the FOI Act. None of these factors were taken into account in making my decision.

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

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

Document lost or non-existent

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

1. *all reasonable steps have been taken to find the document; and*

2. *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.

30. Paragraph 3.90 of the Information Commissioner Guidelines advises the kind of detail this statement of reasons could include to refuse a request under section 24A (1):

...the steps that were taken to search for the document, including the dates as to when the searches were conducted, the search parameters used, the time taken to conduct the search and whether any relevant backups were examined...

31. In relation to items 2 and 4 of the request, to ensure that "all reasonable steps" have been taken in this request, every reasonable avenue of locating potential documents matching the scope of the request has been exhausted. Searches were undertaken by the areas in Defence, identified in subparagraph 5(e), requested to provide documents.

32. Defence Groups and Services undertook key word searches across Defence's information management system and as the Accredited Decision Maker for several FOI requests relating to Op BUSHFIRE ASSIST. This included direct communication with key ADF personnel.

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

Further Information

34. A number of the documents matching the scope of this request were classified while others contained a dissemination limiting marker. I have declassified the versions of the documents that are approved for release and where relevant, the marker has been struck through.

Digitally signed by
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COL Jason Logue
 Accredited Decision Maker
 Vice Chief of the Defence Force Executive