



BN15157889

**FOI 418/19/20 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:

*“...correspondence, emails, memos, minutes, reports and/or any other documents containing information regarding advice to and/or plans to advise state emergency services agencies, including but not limited to the Rural Fire Service, about the deployment of army reservists to help with the bushfire crisis, from 1 Dec 2019 to today. This includes any communications in relation to which agency would take responsibility for advising emergency services about the deployment of army reservists.”*

*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 41 documents as matching the description of the request.
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 11 documents in full;
  - b. partially release 30 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 33 [Documents affecting national security, defence or international relations], section 47C [public interest conditional exemptions-deliberative processes], section 47E [public interest conditional exemptions-certain operations of agencies] and section 47F [public interest conditional exemptions-personal privacy] 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**

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); and
- e. consultation with State and Commonwealth emergency 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 33 – Documents affecting national security, defence or international relations**

9. Subsection 33(a)(i) of the FOI Act exempts information that, if disclosed, would or could reasonably be expected to cause damage to the security of the Commonwealth.

10. In regards to the terms ‘could reasonably be expected to’ and ‘damage’, paragraphs 5.16 and 5.17 of the Guidelines provide that:

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, be presently occurring, or could occur in the future.

5.28 ‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible...but [should be] determined on the facts of each particular case.

11. Having reviewed the information so marked in light of the Guidelines, I am satisfied of the real and substantial risk to national security the release of the exempt information would pose. Disclosure of the information would undermine and compromise the effectiveness of secure contact mechanisms. I have therefore determined that this material is exempt under subsection 33(a)(i) of the FOI Act.

12. Subsection 33(a)(iii) of the FOI Act exempts information that, if disclosed, would or could reasonably be expected to cause damage to the international relations of the Commonwealth.

13. Paragraph 5.36 of the Guidelines describes international relations as the ability of the Australian Government to maintain good working relations with other governments and international organisations.

14. I have identified information documents of the request that could prejudice Australia's relationships with foreign governments and their officials, in particular in relation to their own information. Release of this information could reasonably be expected to cause a loss of trust and confidence in the Australian government and, as a result, foreign officials may be less

willing to engage with Australian government officials in the future. I have therefore determined that this material is exempt under subsection 33(a)(iii) of the FOI Act.

### **Section 47C – Deliberative processes**

15. Subsection 47C(1)(a) of the FOI Act states:

*“A document is conditionally exempt if disclosure under the Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative process involved in the functions of ... an agency...”*

16. I found that one document (Document 10 in the attached schedule) contains material in respect of which a claim for exemption under section 47C of the FOI Act is warranted. On examination of the document, I identified opinions and deliberations regarding administrative decisions that are yet to take place. This material deliberative in nature and does not reflect a finalised decision from within Defence.

17. Taking the above into consideration, I have decided that the identified material is conditionally exempt from release under section 47C of the FOI Act.

### **Section 47E – Certain operations of agencies**

18. Subsection 47E(d) of the FOI Act states:

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

...

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.*

19. 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.

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

21. 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.

22. 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**

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

24. 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.

25. As a person's identity is apparent or reasonably ascertainable from the identified information, I have decided that it constitutes personal information.

26. 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.

27. 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.

28. 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 47C, 47E and 47F**

29. 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'.

30. 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.

31. 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.

32. Additionally, I consider that there is a strong public interest in preventing an adverse effect on the ability of Defence to both receive and prepare frank advice, the premature release of which could impede the effective completion of the matters under deliberation.

33. 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.

34. 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.

#### **Further Information**

35. 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.

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