



DEFENCE FOI 577/23/24: INTERNAL COMPLAINT

1. I refer to your email of 7 March 2024, in which you made a formal complaint to the Department of Defence (Defence) on the handling of your FOI request dated 19 February 2024.

Background

2. On 22 December 2023, you submitted a request for documents under the *Freedom of Information Act 1982* (FOI Act).

3. On 5 January 2024, Defence requested from you a 30-day extension of time to complete processing the FOI request. This would have changed the statutory timeframe to complete the decision to 20 February 2024.

4. On 8 January 2024, you declined the extension request.

5. On 22 January 2024, the decision became deemed pursuant to section 15AC of the FOI Act.

6. On 14 February 2024, Defence applied to the Office of the Australian Information Commissioner (OAIC) to have the matter brought back into time under section 15AC of the FOI Act.

7. On 15 February 2024, the OAIC granted the extension of time request under section 15AC, extending the statutory timeframe to 20 February 2024.

8. On 20 February 2024, the decision was provided to you.

9. On 7 March 2024, you submitted an internal complaint regarding the processing of the FOI request.

Contentions

10. You raised a number of contentions in your complaint dated 7 March 2024. For clarity, Defence has considered paragraphs 15 to 30 of your complaint as relevant to the processing of your FOI request by Defence. The other paragraphs in your complaint are for the consideration of other Government agencies.

Conflict of interest

11. Following investigation, Defence acknowledges that, while the accredited decision maker (ADM) worked in the Office of the Inspector-General of the Australian Defence Force (IGADF), their role there was unrelated to Afghanistan Inquiry matters. The Afghanistan Inquiry matters were managed by a different area within the IGADF.

12. Defence considers that its internal FOI processes, in addition to the separation of the decision maker within the IGADF, mean the decision was made on reasonable and sufficient grounds and there was no denial of natural justice.

13. It is outside the remit of the FOI Act and this complaint process to consider whether there has been a breach of the Public Service Act; however, Defence notes for completeness that the ADM is not a civilian public servant.

Designation

14. Section 23 of the FOI Act provides that a decision be made by an authorised person, including by an officer of the agency acting within the scope of authority exercisable by them in accordance with arrangements approved by the principal officer of the agency.

15. The Secretary of Defence has made such arrangements, dated 15 July 2022, in relation to FOI Accredited decision makers. The instrument provides:

For the further avoidance of doubt, the authority exercisable by FOI Accredited Decision-Makers referred to in column 2 of Item 5 of the Table in Part A of this Schedule is a personal authority. It attaches to the person accredited as an FOI Accredited Decision-Maker and not to any position that an FOI Accredited Decision-Maker occupies from time to time. The authority is not exercisable by any other officer holding or temporarily performing the duties from time to time of the position which an FOI Accredited Decision-Maker occupies from time to time.

16. Therefore, to be clear, for the purposes of section 26 of the FOI Act, Defence submits that, in making an FOI decision, the ADM's designation is not that of their general role, but as an ADM. There is no requirement or standard practice that decision makers also list their job position in the signature block. Provided they are listed as an ADM, it is a matter for the decision maker to decide what additional information they may wish to include in the signature block they use when signing FOI decisions. Accordingly, Defence considers that the signature block used on the decision was valid. Further, what is included on the signature block does not affect the validity of the decision, nor does it constitute a breach of the FOI Act.

17. Defence notes that, on 20 March 2024, you sought an internal review of the decision, thereby exercising your internal review rights.

18. On 26 April 2024, Defence made a decision on your internal review request.

19. Defence's internal review process involved undertaking a fresh review of the original decision, taking into account your contentions. The internal review decision was made by an independent decision maker with no connection to the relevant business area. Defence considers that, if there had of been any deficiencies in the original decision, they would have been addressed by the internal review. I note that this decision, dated 26 April 2024, considered all relevant aspects of the FOI Act and your contentions. The decision exempted the document in full in accordance with sections 47C, 47E(c) and 47F of the FOI Act.

20. In addition, Defence notes that you have exercised your external review rights by seeking a review of Defence's internal review decision with the OAIC. This decision will be

subject to a further independent review undertaken by an agency completely separate from Defence.

21. Defence notes that, at the time of your FOI request, the report you were seeking access to was under assessment by the Minister's office. Following Government consideration of the report, it has now been released publicly and is available on Defence's Afghanistan Inquiry website.

22. I trust this information is of assistance.

Marguerite Wilson-Foreman
Freedom of Information Review
Governance Group