



DEFENCE FOI 695/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by Alex Pentland (the applicant), dated and received on 19 February 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

...the [1.] Style Guides/ [2.] Brand Guides/ [3.] Writing Guides currently used for the Department of Defence.

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 have identified one (1) document as falling within the scope of the request.

Decision

4. I have interpreted the scope of your request as being a request for the Department of Defence corporate [1.] Style/ [2.] Brand/ [3.] Writing Guides.
5. Accordingly, I have decided to:
 - a. partially release the document 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(d) [Public interest conditional exemptions--certain operations of agencies] of the FOI Act;
 - b. refuse Item three [3.] of 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; and
 - c. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

6. In making my decision, I have had regard to:
 - a. the terms of the request;
 - b. the content of the identified document in issue;
 - c. relevant provisions of 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 22 – Access to edited copies with exempt or irrelevant matter deleted

7. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse access to an exempt document or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.
8. The document contains exempt material and information that does not relate to the request.
9. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents to you in an edited form.

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 documents has been exhausted.
13. In relation to Item 3. of the request, Defence personnel conducted searches within relevant databases for documents matching the description of *'Writing Guides currently used for the Department of Defence'*. No documents matching the applicants scope were identified.
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.

Section 47E – Public interest conditional exemptions – certain operations of agencies

15. Section 47E 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:

...

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

16. The Guidelines, at paragraph 6.123, provide that:

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.

17. I find that disclosure of the material exempt under section 47E(d) of the Act would have a substantial adverse effect on the proper and efficient conduct of the operations of Defence. The document contains operational Defence email addresses that are not otherwise publicly available. Disclosure of the operational contact details would allow members of the public to circumvent established methods and dedicated points of contact, which would undermine the operation of Defence's established channels of communication. Further, disclosure could reasonably be expected to expose operational areas to vexatious communication and public inquiries, which they are not ordinarily resourced to manage.

18. I am satisfied that were the operational contact details made publicly available, it would have substantial adverse effects on the proper and efficient operation of existing public communication channels. Further, I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely affects the proper and efficient conduct of Defence operations. Disclosure of operational email addresses therefore, could reasonably be expected to prejudice the operations of Defence.

19. The Guidelines provide, at paragraph 6.120, that I should consider whether disclosure of the information 'would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient.' Given that the operational email addresses within the document are not publicly available and that more appropriate communication channels are already available, I am satisfied that release of the information could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.

20. Accordingly, I am satisfied that all the specified information contained within the document is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations - section 47E(d)

21. Section 11A(5) of the FOI Act states:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

22. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

(a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);

(b) inform debate on a matter of public importance;

(c) promote effective oversight of public expenditure.

23. In my view, disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).
24. 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:
- the management function of an agency.
25. As I have established above, the release of the operational contact details can reasonably be expected to prejudice the management functions of Defence. Existing communication channels and processes enable efficient and appropriate liaison with the public, and therefore I consider there is no public interest in disclosing the operational contact information. The operational email addresses should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.
26. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.
27. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under section 47E(d) of the FOI Act.



Luke M
Decision Maker
Governance Group
Department of Defence

20 March 2024