



DEFENCE FOI 863/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

...the video recordings of the IGADF MRH-90 Inquiry hearings held in Brisbane on 27 February 2024 and Monday 29 April 2024 through to Friday 3 May 2024.

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 107 documents as matching the description of the request.

Decision

4. I have decided to refuse access to all documents on the grounds that the documents are considered exempt under section 46 [Documents disclosure of which would be contempt of Parliament or contempt of court] of the FOI Act.

Material taken into account

5. 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. information from the Inspector-General of the Australian Defence Force (IGADF) concerning a current inquiry and directions given by a duly authorised Assistant IGADF pursuant to subsections 21(1)-(2), and 28M(1)-(2) of the *Inspector-General of the Australian Defence Force Regulation 2016* (the IGADF Regulation) in connection with that inquiry.

REASONS FOR DECISION

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

6. Where a decision maker denies access to a document, section 22(1) of the FOI Act requires that they consider releasing the document with exempt matter deleted, if possible.

7. Paragraph 3.97 of the Guidelines provides that:

The obligation to prepare an edited copy of a document so that it does not contain exempt or irrelevant content is subject to the following conditions:

...

- *it is reasonably practicable to prepare an edited copy, having regard to the nature and extent of the modification required, and the resources available to modify the document (s 22(1)(c))*

8. I have considered disclosing the documents to you with deletions, but have decided to refuse access to the documents as the IGADF does not possess the technical capability to edit the footage and therefore it is not reasonably practicable for Defence to prepare an edited copy with the exempt material removed.

Section 46 – Documents disclosure of which would be contempt of Parliament or contempt of court

9. Section 46(b) of the FOI Act states:

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:

...

- (b) *be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath*

10. In regard to ‘contrary to an order or direction’, the Guidelines provide at paragraph 5.217:

Documents protected by s 46(b) are documents subject to an order prohibiting their publication, made by a Royal Commission, tribunal or other body having power to take evidence on oath. Royal Commissions are established for a fixed time period. However any confidentiality orders continue in effect past this period.

11. I am aware of directions given by a duly authorised Assistant IGADF under subsections 21(1)-(2), and 28M(1)-(2) of the IGADF Regulation in relation to the aforementioned Inquiry pertaining to the non-disclosure of certain evidence and identities of certain witnesses.

12. The directions were made on the basis that it was necessary to restrict disclosure in the interests of fairness to persons who the IGADF considers may be affected by the Inquiry.

13. Further, I have identified that the Assistant IGADF has power under subsections 23(5) and 23(6) of the IGADF Regulation to examine witnesses on oath or affirmation.
14. I therefore consider that a direction under subsections 21(1)-(2), and 28M(1)-(2) of the IGADF Regulation that evidence or documents not be disclosed falls within subsection 46(b) of the FOI Act.
15. Accordingly, I am satisfied that the documents are exempt under section 46(b) of the FOI Act.

matthew.ber
risford1

Digitally signed by
matthew.berrisford1
Date: 2024.05.31 16:09:18
+10'00'

MJ Berrisford
Accredited Decision Maker
Office of the Inspector-General of the Australian Defence Force