



DEFENCE FOI 1002/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

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

Please provide conflict of interest declarations by RAAF Officer Catherine Wallis for the years 2020 to 2024 inclusive.

FOI decision maker

2. I am an officer authorised pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I have identified documents as falling within the scope of the request.

Decision

4. I have decided to refuse access to identified documents on the grounds that the documents are considered exempt under sections 47E(c) and 47F of the FOI Act;

Material taken into account

5. In making my decision, I have had regard to:
 - a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions of 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. whether you hold authority to obtain the named third party's personal information; and
 - f. recent decisions issued by relevant jurisdictions, including '*AKT and Services Australia (Freedom of Information)* [2024] AICmr 114 and '*Paul Farrell and Department of Home Affairs (Freedom of Information)* [2023] AICmr 37.

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 3.98 of the Guidelines provides that:

...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.

8. I have considered disclosing the documents to you with deletions, but have decided to refuse access to the documents as they would be meaningless and of little or no value once the exempt material is removed.

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

9. Section 47E(c) 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:

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency

10. I find that the information specified relates to the management of personnel, including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and work health and safety. I have reached this conclusion, as Defence requests that staff complete conflict of interest forms when undertaking certain activities as part of their roles and responsibilities.
11. The Guidelines further provide at paragraph 6.109 that:

In some circumstances it may be appropriate to address concerns about the work health and safety impacts of disclosing public servants' personal information (such as names and contact details) under s 47E(c).
12. I consider that the disclosure of the personal information provided by staff in completing conflict of interest forms would, or would reasonably be expected to impact the ability of Defence to fulfil its workplace health and safety obligations under the *Work Health and Safety Act 2011* (WHS Act).
13. In making my assessment, I have considered factors listed at paragraph 6.111 of the Guidelines, and that Defence has a primary duty under the WHS Act to manage risks (or potential risks) to the health and safety of its personnel by eliminating these risks as much as is reasonably practicable.
14. In determining the potential risks to the health and safety of personnel, I have reflected that there have previously been cases of Defence staff being harassed, or having received personal threats online as a result of the previous public disclosure of their personal information, such as their name.
15. Accordingly, I am satisfied that the documents are conditionally exempt in full under section 47E(c) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

16. Section 47F(1) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

17. The FOI Act shares the same definition of ‘personal information’ as the *Privacy Act 1988* (Cth). The Guidelines provide that:

6.123 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not.

18. I found that the documents wholly comprise of the personal information of another person.

19. In my assessment of whether the disclosure of the personal information is unreasonable, I have considered the following factors in accordance with section 47F(2):

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 with in the document;

c. the availability of the information from publicly accessible sources; and

d. the effect the release of the personal information could reasonably have on the third party.

20. I have found that disclosure of the personal information would be unreasonable, as the information is not well known, and the personal information is not readily available from publicly available sources.

21. I have considered the effect that release could reasonably have on the third party, and note my reasons provided at paragraphs 9 to 15 above.

22. I have also considered the nature, age and potential current relevance of the information sought. The timeframe relevant to your request seeks access to documents from 2020 to 2024. I have determined that there has been no passage of time that may have otherwise impacted or reduced the relevance or sensitivity of the information sought.

23. Accordingly, I am satisfied that the documents are conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E and 47F

24. 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.

25. 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;*
 - (d) allow a person to access his or her own personal information.*
26. 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).
27. I have also considered that disclosure would not promote the objects of the FOI Act, as release of the documents would not increase public participation in government processes to promote better-informed decision making, or increase discussion or scrutiny of Government's activities.
28. Paragraph 6.233 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure, which I have also considered in making my decision.
29. Factors against disclosure, that I find particularly relevant to this request include that release of the requested information:
 - could reasonably be expected to prejudice the protection of an individual's right to privacy;
 - could reasonably be expected to prejudice the personnel management function of Defence, including that Defence must fulfil its workplace health and safety obligations when handling the personal information of its staff,
 - could reasonably be expected to risk the health, safety and wellbeing of individual(s) named within the document,
 - that disclosure would not advance transparency or promote a public purpose, but would merely satisfy the applicant's curiosity
30. I have also considered that the FOI Act does not restrict the further dissemination or publication of material released in response to requests for access, and that broad dissemination could reasonably be expected to expose individuals to the risk of harassment or unsolicited contact.
31. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. As I have established above, the release of the personal information of Defence staff can reasonably be expected to

prejudice the management functions of Defence. The personal information of Defence staff should, therefore, not be disclosed, as the public interest against disclosure outweighs public interest in its release.

32. Further, it is in the public interest that the personal privacy of third parties be preserved, particularly in circumstances where the information is not well known. The documents should, therefore, not be disclosed, as the public interest against their disclosure outweighs public interest in their release.
33. I have not taken into account any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act when making this decision.
34. 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 sections 47E(c) and 47F of the FOI Act.

Jason Woods

Accredited Decision Maker
Associate Secretary Group
Department of Defence