



DEFENCE FOI 141/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by Mr John Davis (the applicant), dated and received on 15 August 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

I am seeking the public release of the Joint Doctrine "Public Affairs 3-16" under the Freedom Of Information Act.

Background

2. On 23 and 28 August 2024, Defence wrote to the applicant seeking clarification regarding the scope of the request. A response was not received to these requests.

FOI decision maker

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

Documents identified

4. I have identified one document as falling within the scope of the request.

Decision

5. The publication to which the applicant refers in the request appears to be a United States Joint Chiefs of Staff Joint Publication (*JP 3-61, Public Affairs*). The Australian Department of Defence utilises a different nomenclature system for its joint publications. I am satisfied it is reasonably practicable to assume the applicant is seeking the Australian Department of Defence equivalent publication relating to its public affairs doctrine.
6. I consider the ADF-A(J)-3 Series - Military Public Affairs satisfies the applicants request.
7. I have decided to refuse access to 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 sections 47E [Public interest conditional exemptions--certain operations of agencies] and 47F [Public interest conditional exemptions--personal privacy] of the FOI Act.

Material taken into account

8. 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

9. 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.

10. 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.

11. I have decided to refuse access to the document as it 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

12. 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:

...

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

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

13. In relation to section 47E(c) of the FOI Act, the Guidelines provide at paragraph 6.102, that:

Where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely, that:

- *an effect would reasonably be expected following disclosure*
- *the expected effect would be both substantial and adverse.*

14. The document contains photographic images which disclose the faces and names of APS and ADF personnel. The identities of those contained within the document are not publicly available and disclosure could reasonably be expected to have an adverse effect on the health and wellbeing of those individuals.

15. There is a reasonable likelihood that aggrieved individuals could harass staff or use the photographic images inappropriately in the public domain. The FOI Act places no limitations on the use of information disclosed under the Act, and I am satisfied that

that there is a reasonable expectation that this would cause distress to the staff members by adversely affecting their physical and mental wellbeing.

16. Further, releasing details about individuals could adversely affect Defence's ability to conduct future activities if employees felt Defence lacked integrity with respect to protecting the confidentiality of their records; thus affecting the proper and efficient conduct of the operations of Defence. Consequently, this would result in a substantial adverse effect on the broader management of APS and ADF personnel.
17. In relation to section 47E(d) of the FOI Act, the Guidelines provide at paragraph 6.115 that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its operations in an expected manner.
18. The document contains group inbox details, the release of which would undermine the operation of established channels of communication with the public. I am satisfied that the release of this information would have a substantial adverse effect 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 health, wellbeing and work of Defence personnel. Disclosure of internal email inbox details could, therefore, reasonably be expected to prejudice the operations of Defence.
19. Additionally, I have found that the document contains information relating to the operational processes of Defence, particularly details of Defence Military operations and public affairs. In order to determine if the disclosure would, or could reasonably be expected to have a substantial, adverse effect on the proper and efficient conduct of the operations of Defence, I have considered the functions of the relevant Groups and Services.
20. I consider that the relevant information would, or could reasonably be expected to release information about the internal workings and processes of these areas, which would damage the strategic and operational efficiencies of Defence. Disclosure would reveal tactical or strategic plans, which could be expected to undermine operations by allowing adversaries to predict agency actions, thus reducing the agencies strategic advantage and impairing Defence's ability to carry out its functions effectively. Further, by revealing sensitive strategies or procedures, I am of the view that disclosure could compromise national security, thereby aiding adversaries in countering or disrupting Military operations.
21. The Guidelines provide, at paragraph 6.112, 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 the nature of the information, I am satisfied that release could reasonably be expected to lead to a change in Defence's processes that would not lead to any efficiencies.
22. Accordingly, I am satisfied that the information is conditionally exempt under sections 47E(c) and 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

23. 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).

24. 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.

25. I found that the document for release contains photographic images, which disclose the faces of multiple third party individuals. I am satisfied that this meets the definition of personal information.

26. In my assessment of whether the disclosure of personal information is unreasonable, I 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.

27. I found that the identities of those appearing in the photographic images are not well known, that individuals whose personal information is contained in the document is not widely known to be associated with the matters dealt within the document, and that the information is not readily available from publicly accessible sources.

28. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E and 47F

29. 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.

30. 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.*
31. 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).
32. Paragraph 6.233 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 protection of an individual's right to privacy;
 - the interests of an individual or a group of individuals;
 - an agency's ability to obtain similar information in the future; and
 - the management and personnel management function of an agency.
33. 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 photographic images containing the faces of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. The images should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.
34. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of the material contained in the documents, particularly those that refer Defence's internal processes which allow Defence to undertake its operational activities in an expected and lawful manner. Additionally, I am of the view that it would be contrary to the public interest to disclose the personal information of a third party and cause unnecessary distress to them.
35. 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.

36. 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 document is exempt under sections 47E and 47F of the FOI Act.

matthew.mccor 2024.09.16

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M McCormack

Accredited Decision Maker

Vice Chief of the Defence Force Group

Department of Defence