



DEFENCE FOI 222/24/25

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 September 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 an export from Sentinel which lists all MRH90 safety incidents that were/are notifiable to Comcare.”

Background

2. On 23 September 2024, Defence sought informal clarification from the applicant in relation to the scope of their request. A response was not received to this correspondence, nor the follow-up dated 27 September 2024.
3. On 2 October 2024, Defence formally consulted with the applicant in accordance with section 24AB of the FOI Act.
4. On 4 October 2024, the applicant refused to revise the scope of the request.
5. On 18 October 2024, Defence sought the applicants agreement to extend the period for dealing with the request from 21 October 2024 until 4 November 2024 in accordance with section 15AA [extension of time with agreement] of the FOI Act. The applicant did not respond to this request.
6. On 21 October 2024, Defence applied to the Information Commissioner for further time to deal with the request under section 15AC [decision not made on request within time—deemed refusal] of the FOI Act. On 29 October 2024, the Information Commissioner denied Defence’s request.

FOI decision maker

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

Documents identified

8. I identified no documents as falling within the scope of the request.

Decision

9. I have decided to refuse 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.

Material taken into account

10. In making my decision, I have had regard to:
- a. the terms of the request;
 - b. relevant provisions of the FOI Act;
 - c. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - d. advice provided from relevant Groups and Services within the Department, including Army, Defence People Group and Capability Acquisition and Sustainment Group.

REASONS FOR DECISION

Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

11. 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.*
12. 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...*
13. Paragraph 3.208 of the Guidelines states that the FOI Act gives a legally enforceable right of access to documents that already exist, and an agency is not required to create a new document to satisfy an FOI request.
14. To ensure that all reasonable steps have been taken to locate documents matching the scope of the request, searches have been undertaken across a number of relevant business areas. Searches were undertaken of the Defence WHS Incident Reporting System, Sentinel, using the key terms 'MRH-90' and 'Comcare'. No records matching the applicant's scope were located.
15. Consulted business areas have advised that the Department is unable to provide, or create, an 'export' that meets the scope of the request. This is because Sentinel does not automatically populate details on whether incidents were/are notifiable to Comcare. To identify this information would require a significant level of manual intervention and review, and I am of the view that this would be a substantial and unreasonable diversion of the Departments resources.

16. Having regard to the scope of the request, I am satisfied that all reasonable steps have been taken to locate any documents relevant to the applicant's request. Subsequently, I am satisfied that the document/s cannot be found or do not exist, and refuse the request under section 24A(1) of the FOI Act.

Joanne GROVES Digitally signed by Joanne
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Date: 2024.11.08 15:18:38 +11'00'

Mrs Joanne Groves
Accredited Decision Maker
Army Headquarters
Department of Defence