



**Australian Government**  
**Department of Defence**

Reference:

**FOI 546/19/20 - STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by Ms Kellie Tranter under the *Freedom of Information Act 1982* (FOI Act), for access to:

*“A copy of Defence rules of engagement under the Defence Amendment (Call Out of the Australian Defence Force) Act 2018.”*

**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 one document as matching the description of the request.

**Decision**

4. I have decided to refuse access to the document in its entirety, as the document is an exempt document pursuant to subparagraphs 33(a)(i) [the security of the Commonwealth], 33(a)(ii) [the defence of the Commonwealth] and 47E(d) [certain operations of agencies] 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; 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 33 [Documents affecting national security, defence or international relations]**

6. Section 33 of the FOI Act states:

***33 Documents affecting national security, defence or international relations***

*A document is an exempt document is disclosure of the document under the Act:*

*(a) would, or could reasonably be expected to, cause damage to:*

- (i) the security of the Commonwealth;*
- (ii) the defence of the Commonwealth ...;*

7. Paragraph 5.29 of the Information Commissioner Guidelines specifically addresses interpretation of the term ‘security of the Commonwealth’ and advises decision makers on considerations concerning ‘damage’ to the Commonwealth. The term ‘damage’ is not defined in the FOI Act so should be given its normal meaning in accordance with the rules of statutory interpretation. The Macquarie Dictionary defines the word ‘damage’ to mean: ‘injury or harm that impairs value or usefulness’.

8. At paragraph 5.31 of the FOI Guidelines, the term ‘damage’ is further defined. The FOI Guidelines state:

*The meaning of ‘damage’ has three aspects:*

- i. that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military take over as examples.*
- ii. the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. The organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

9. In considering the application, I am cognisant that the Rules of Engagement requested were specifically developed to address a danger to the security of the Commonwealth and that the safety of ADF personnel whose role would be to provide protection from that danger would be directly impacted by the release of information.

10. Rules of Engagement govern the use of force by the ADF. They must comply with Australia’s domestic law and be consistent with Australia’s international legal obligations. Authorised operations-specific Rules of Engagement include the precise scope of the application of those rules. An adversary or potential adversary could, and likely would, exploit this information if it were to become public knowledge by adapting operational planning and enacting specific tactics to generate an advantage against an Australian Defence Force Call-Out. Australian Defence Force personnel would be at significantly greater risk if their Rules of Engagement were to become public. I note that in paragraph 5.32(b) of the Information Commissioner Guidelines, a previous request for information relating to procedures for assistance in dealing with terrorism was denied by the Department and this decision was subsequently upheld by the Information Commissioner as disclosure would pose a significant risk to security by revealing Australia’s tactics and capabilities.

**Reason for decision - Section 47E(d) [certain operations of agencies]**

11. I have determined that the entirety of the document is also exempt pursuant to subsection 47E(d) of the FOI Act which relevantly 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 an agency.*

12. In relation to subsection 47E(d) of the FOI Act, paragraph 6.123 of the FOI Guidelines states that, where a document relates to certain operations of an agency, the decision-maker must address whether the predicted effect would bear on the agency’s ‘proper and efficient’ operations; that is, the agency is undertaking its expected activities in an expected manner.

13. Having examined the document, I consider that release of the document would or could substantially adversely affect the efficient conduct of Defence, by:

- a. enabling activities that hinder or prejudice the effectiveness of the Defence Force; and
- b. compromising the safety of members of the Australian Defence Force.

14. Given the above, I find that the release of the document could or would substantially affect the efficient operations of Defence. I therefore have decided that the document is conditionally exempt pursuant to subsection 47E(d) of the FOI Act.

### **General Considerations**

15. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

16. As part of my consideration on the relevant factors affecting the balance of public interest, I gave consideration to the objectives of the FOI Act, the FOI Guidelines, and the factors favouring access to documents set out at subsection 11B of the FOI Act.

17. I have considered all relevant considerations, and I am satisfied that the expected effect of disclosing the document could, or would reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of Defence. Therefore, I am of the opinion that the factors favouring denying access to the document outweigh any of the factors supporting its disclosure. Accordingly, I find that on balance, the public interest is best served by not disclosing the document and by deeming the information exempt under subparagraph 47E(d) of the FOI Act.

18. I am satisfied that disclosure of the requested document under the FOI Act would pose grave risk to the security of the Commonwealth, and to those charged with protecting it.

COL Jason Logue  
Accredited Decision Maker  
ADF Headquarters