



**Australian Government**

**Defence**

Angelene Falk  
Australian Information Commissioner  
Office of the Australian Information Commissioner

By email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Dear Ms Falk

### **Submission to Consultation on draft revisions to Part 5 of the FOI Guidelines: Exemptions**

The Department of Defence (Defence) welcomes the opportunity to comment on the proposed changes by the Office of the Australian Information Commissioner (OAIC) to the Part 5 of the FOI Guidelines: Exemptions.

Defence has no objection to these submissions being published.

Defence has reviewed the draft consultation guidelines and provides the following comments:

#### **Increased emphasis on disclosure**

The revised wording has increased the emphasis on the ability to provide access to documents under the *Freedom of Information Act 1982* (FOI Act) even when an exemption is available under Part IV of the FOI Act.

In line with this approach, Defence notes the removal of paragraph 5.33 in the current Guidelines –

*The Information Commissioner believes that it might be safer for the FOI decision maker to err on the side of non-disclosure provided the interests of other citizens are able to be protected.<sup>[21]</sup> Where there is doubt, this should be in favour of non-disclosure.<sup>[22]</sup>*

Defence suggests that consideration should be given to including some commentary regarding section 33 and proposes:

*The Information Commissioner takes a conservative approach to the application of section 33 of the FOI Act to documents under review and notes that there may be instances where the interests of the community favour non-disclosure.*

#### **Section 34 – Cabinet documents**

Defence notes the revised wording in relation to the cabinet exemption and the addition of further guidance following the decision of *Patrick and Secretary, Department of Prime*

*Minister and Cabinet (Freedom of Information) [2021] AATA 2719*, in relation to what factors will be considered when determining whether a committee is a 'Committee of Cabinet'.

### **General Comments**

The inclusion of an introduction for each section is an improvement on the current guidelines as it provides a clear and concise articulation of each section and the purpose of Part 5 of the Guidelines, more broadly.

The additional guidance on some of the commonly used terminology and the inclusion of further case law is helpful to better explain the application of the sections.

Overall, Defence finds the draft Guidelines clearer and more helpful to FOI practitioners.

Regards,

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