



Australian Government
Department of Defence

Reference: P290772

FOI 024/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

"Documents (covering the period 1 July 2014 to present) related to the New Zealand Defence Force's involvement with Operation Accordion as part of:

Item 1 - The JTF633 Air Mobility Task Group (AMTG) (referred to as Operation TEAL by the NZDF).

Item 2 - The Combined Air Operations Center (CAOC) at Al Udeid Air Base, Qatar

Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition duplicate documents are also excluded."

FOI decision maker

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

Documents identified

3. I have identified eleven documents as matching the description of the request.
4. The decision in relation to each document is detailed in a schedule of documents.
5. I have added an FOI reference number and Item number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:
 - a. partially release six documents matching Item 1 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 33(a)(i) & (b) [Documents affecting national security or would divulge any information or matter communicated by or on behalf of a foreign government] of the FOI Act;
 - b. deny access to five documents matching Item 1 of the request under subparagraph section 33(b) [Documents that would divulge any information or matter communicated by or on behalf of a foreign government] of the FOI Act;
 - c. refuse access to Item 2 of the request under subparagraph 24A(1)(b)(ii)[Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and

- d. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

- 7. 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;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
 - e. advice provided by Headquarter Operations Command (HQJOC); and
 - f. advice provided by representatives of the New Zealand Defence Forces.

Reasons for decision

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

- 8. 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.*

9. I have consulted with Headquarters Joint Operations Command (HQJOC) and am advised that no documents can be located for Item 2 of the request. I am advised that HQJOC undertook searches of the Electronic Document Register System (EDMS) and Document Records Management System (DRMS) for documents relating to the application. I am satisfied that all reasonable steps have been taken to identify documents matching the description of Item 2.

10. I have therefore decided to refuse access to Item 2 under section 24A of the FOI Act.

Section 33(a)(i) – Documents affecting national security

11. Section 33(a)(i) of the FOI Act exempts documents that would, or could reasonably be expected to cause damage to the Commonwealth's security.

12. The documents contain some information in relation to operational security, the disclosure of which could reasonably be expected to cause damage to the security or the defence of the Commonwealth by providing adversaries with a military advantage.

13. In evaluating the potential harmful effects of disclosing information in the documents I have also taken into account 'mosaic theory', which refers to individual pieces of information which may not be harmful in isolation, but which may cause damage to Australia's national security and defence when combined with other pieces of information.

14. I have therefore determined that the material is exempt under section 33(a)(i) of the FOI Act.

Section 33(b) – Documents that would divulge any information or matter communicated by or on behalf of a foreign government

15. Section 33(b) of the FOI Act exempts documents that would divulge any information or matter communicated in confidence by or on behalf of a foreign government to an authority of the Commonwealth. Since the documents contain information pertaining to operational matters involving the New Zealand Defence Forces (NZDF), and have been raised using information provided by the NZDF or are copies of NZDF documents, the NZDF was approached regarding the release of confidential information provided to the ADF. The NZDF has:

- a. agreed the partial release of classified content in Serials 1,4,6,8,9 & 11 of the schedule of documents; and
- b. requested that the Commonwealth of Australia respect the confidentiality of the information contained in Serials 2,3,7 & 10 of the schedule of documents.

16. Having reviewed the eleven documents and their relevance to operations, I am satisfied that the documents and information contained in them was passed in confidence to the Commonwealth. I have therefore determined that the material is exempt under section 33 (b) of the FOI Act.

Section 22

17. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the exempt documents to the applicant with deletions, but have decided against this course of action, as the document would be meaningless and of little or no value once the exempt material is removed.

Further Information

18. A number of the documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release and redacted the security marker.

19. Note that Item 4 is a decision brief that contained a copy of Item 3 as an enclosure. Since Item 3, was assessed as exempt under section 33 (b) and comprised 173 pages, those pages were deleted from the partially released Item 4. In addition, the document at Item 5 was reviewed and identified as a copy of Item 4, which has been included for partial release.

nick.cram

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Nick Cram
 Accredited Decision Maker
 Joint Operations Command

11 Nov 2017