



Australian Government
Department of Defence

Freedom of Information
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CANBERRA BC ACT 2610
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Fax: 02 626 62112
FOI@defence.gov.au

Our reference: FOI 068/15/16



By email: [Redacted]

Dear [Redacted]

1. I refer to your request, dated 9 September 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

The Administrative Instruction Sustainment Statement for Operation Orka [sic]. - The Draft Health Concept of Operations for Operation Orka [sic]. - An Administrative Instruction Sustainment Statement for Operation Accordion - And any Administrative Instruction Statement created or Draft Health Concept of Operations for expanded operations into the Syrian Arab Republic either under Operation Accordion or any other Operation.

Background

2. The purpose of this letter is to provide you with the decision relating to the documents that are the subject of your request.

FOI decision maker

3. Group Captain Ralph Kettle, J45 (Director Logistic Plans), Headquarters Joint Operations Command was the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

4. Three discrete documents were identified as containing information broadly relevant, in whole or in part, to Items 1, 2 and 3 of the request based on the definition for Sustainment drawn from Australian Defence Doctrine Publication 4.4 (ADDP 4.4)

The provision of personnel, logistics, and other support required to maintain and prolong operations or combat until successful accomplishment or revision of the mission of the national objective:

- a. Chief of Joint Operations Operation Order 07/14 Operation OKRA (classified as SECRET (Releasable AUS, CAN, GBR, NZL, USA)).

- b. Chief of Joint Operations Operation Order 04/14 Operation ACCORDION (classified as SECRET (Releasable AUS, CAN, GBR, NZL, USA)).
- c. Chief of Joint Operations Support Order 02/14: Support to Operations in the Middle East Region (classified as PROTECTED).

Decision

5. Group Captain Kettle decided to partially release three documents with deletions made in accordance with subsection 22(1) [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 Section 33 [Documents affecting national security, defence or international relations], and Section 47F [Documents affecting personal privacy] of the FOI Act as described below.

- a. Chief of Joint Operations Operation Order 04/14 Operation OKRA (classified as SECRET (Releasable AUS, CAN, GBR, NZL, UISA)), contains information relevant to Items 1 – 3 of the request and as defined in ADDP 4.4. Group Captain Kettle found that the main document comprises 30 pages, of which five pages (24 – 28), or portions thereof can be made available. The remaining pages comprise material removed pursuant to section 22 of the FOI Act.
- b. Chief of Joint Operations Operation Order 07/14 Operation ACCORDION (classified as SECRET (Releasable AUS, CAN, GBR, NZL, USA)), contains information relevant to Items 1 – 3 of the request and as defined in ADDP 4.4. Group Captain Kettle found that the main document comprises 34 pages, of which five pages (28 – 32 inclusive and page 33 {not numbered}), or portions thereof can be made available. The remaining pages comprise material removed pursuant to section 22 of the FOI Act.
- c. Chief of Joint Operations Support Order 02/14: Support to Operations in the Middle East Region (classified as PROTECTED) contains information relevant to Items 1 – 3 of the request and as defined in ADDP 4.4. Group Captain Kettle found that the main document comprises ten pages, or portions thereof can be made available. The redactions comprise material removed pursuant to section 22 of the FOI Act.
- d. No documents matching the description of Item 4 could be found. Group Captain Kettle decided to refuse access to the request for documents under Item 4 under Section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act in that the document(s) do not exist.

Material taken into account

- 6. In making his decision Group Captain Kettle had regard to:
 - a. the terms of the FOI request;

- b. the content of the documents that fall within the scope of the applicant's request;
- c. the 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. the principles on open public sector information issued by the Information Commissioner; and
- f. advice from Defence officers with responsibility for matters relating to the documents meeting the scope of the applicant's request.

Reasons for Decision

Section 22 of the FOI Act

7. Subsection 22(1)(a)(i) of the FOI Act requires that where a decision maker denies access to a document, consideration must be given to releasing the documents with the exempt material removed.

8. Where material has been removed under Section 22(1)(a)(ii) of the FOI Act, Group Captain Kettle considered that it did not meet the specific terms of the request, nor would it add to your understanding of the information being provided.

Section 24A of the FOI Act

9. With regard to Item 4, Group Captain Kettle decided to refuse access to the requested documents under Section 24A [does not exist] of the FOI Act.

Document lost or non-existent

(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.*

10. In making his decision Group Captain Kettle made inquiries of personnel and by officers whose role is to closely monitor operations in the Middle East Region and he was advised that no Administrative Instruction Statement or Draft Health Concept of Operations for expanded operations into the Syrian Arab Republic either under Operation Accordion or any other Operation have been created. Additionally, he undertook searches of HQJOC electronic document holdings and was unable to identify any items matching the description provided under Item 4.

11. In applying this exemption, Group Captain Kettle placed great emphasis on the knowledge and expertise resident in the officers with whom he consulted and the knowledge that the electronic information key word search was unable to identify any document matching the description of Item 4 and decided to refuse access to information relating to Item 4, on the grounds that it does not exist.

Section 33 of the FOI Act

12. Where access has been denied under section 33 of the FOI Act, Group Captain Kettle considered that the deleted material would, or could reasonably be expected to, cause damage to the defence and/or international relations of the Commonwealth.

13. In applying this exemption, Group Captain Kettle considered the likelihood of damage occurring as a result of release of the material that he considered to be exempt under section 33 of the FOI Act. In regards to the terms 'would reasonably be expected to' and 'damage', he noted that the Guidelines provide:

5.13 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of the documents.

5.14 The use of the word 'could' in this qualification is less stringent than 'would', and so requires no more than a degree of reasonableness being applied to deciding whether disclosure would cause the consequences. Therefore, the reasonable expectation refers to activities that might reasonably be expected to have occurred be presently occurring, or could occur in the future.

5.25 'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage was likely to result from disclosure of the documents(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments ...

Damage to the Security of the Commonwealth - subparagraph 33(a)(i)

14. Section 33(a)(i) exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

15. Group Captain Kettle found that disclosure of the information exempted under section 33(a)(i) would cause, or could reasonably be expected to cause, damage to the security of the Commonwealth.

16. The Guidelines relevantly state that 'security' of the Commonwealth' includes:

5.26 ...The term 'security of the Commonwealth' broadly refers to:

(a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests...

5.27 *A decision maker must be satisfied that damage to the security of the Commonwealth would be caused by disclosure of the information under consideration.*

17. Group Captain Kettle formed the view that some of the information contained within the documents, if released, could jeopardise the capability of the Australian Defence Force (ADF) thus adversely impact on the security of the Commonwealth. He formed the view that the information could be used by adversaries to target Defence facilities and/or members and expose those members to unnecessary risk. Considering that operations are continuing he believes that disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

Damage to the Defence of the Commonwealth - subparagraph 33(a)(ii)

18. Section 33(a)(ii) exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the defence of the Commonwealth.

19. Group Captain Kettle found that disclosure of the information exempted under section 33(a)(ii) would cause, or could reasonably be expected to cause, damage to the defence of the Commonwealth.

20. The Guidelines relevantly state that ‘defence of the Commonwealth’ includes:

5.28 ...

- *meeting Australia’s international obligations*
- *ensuring the proper conduct of international defence relations ...[and]*
- *protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

21. Group Captain Kettle formed the view that some of the information contained within the documents, if released, could jeopardise the capability of the Australian Defence Force (ADF) thus adversely impact on the defence of the Commonwealth. This particular information relates to, among other matters, classified information relating to the command and control arrangements in place for current Middle East Region Warlike operations, reporting arrangements, Force Element tasking and interrelationships and also information, that if made publicly available, could compromise certain tactics, techniques and procedures.

22. Accordingly, Group Captain Kettle decided to exempt certain information from release under subparagraph 33(a)(ii) of the FOI Act, on the basis that its disclosure would, or could reasonably be expected to, cause damage to the defence of the Commonwealth.

Damage to the international relations of the Commonwealth - Section 33(a)(iii)

23. Section 33(a)(iii) of the FOI Act exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. *‘International relations’ has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them, including relations between government agencies.*

24. Group Captain Kettle formed the view that some of the information contained within the documents, if released, could cause damage to the international relations of the Commonwealth. He found that certain information relating to the naming of certain locations and the utilisation of certain facilities in the Middle East Region, should it be publicly released by Defence without the explicit agreement of the other party, would, on balance, be likely to compromise and damage international relationships of the Commonwealth.

25. Accordingly, Group Captain Kettle decided to exempt certain information from release under subparagraph 33(a)(iii) of the FOI Act, on the basis that its disclosure would cause, or could reasonably be expected to cause, damage to the international relations of the Commonwealth.

Section 47F – Documents affecting personal privacy

26. Group Captain Kettle found that the identified documents contained the names and personal details of Defence personnel. He was satisfied that the information meets the definition of personal information for the purposes of the FOI Act.

27. 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). In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to the following matters:

- 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; and*
- c. *the availability of the information from publicly accessible sources.*

28. Group Captain Kettle was satisfied that the information is not well known. He was also satisfied that the persons to whom the information pertains are not known to be associated with the issues discussed in the documents, nor is the information readily available from public sources.

29. Having considered the above, Group Captain Kettle decided that the disclosure of this information would be an unreasonable disclosure of personal information belonging to persons other than the applicant. Accordingly, he considered this material to be conditionally exempt under section 47F of the FOI Act.

30. Section 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless in the circumstances access to the documents would, on balance, be contrary to the public interest.

Public interest considerations - Section 47F

31. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Group Captain Kettle considered the guidelines, together with a range of factors that favour access to a document as set out in section 11B(3) [public interest exemptions - factors favouring access] of the FOI Act.

32. Group Captain Kettle considered the public interest in promoting the objects of the FOI Act have been satisfied and did not believe the release of the specific personal information would inform public debate on any matter of public importance in a meaningful way. In coming to the above decision, he also considered subsection 11B(4) [public interest exemptions - irrelevant factors] of the FOI Act. Accordingly, he was satisfied that on balance the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents.

Declassification of documents

33. The original documents matching the scope of this request are classified variously as PROTECTED, SECRET or have limited distribution caveats. The originator of the original documents has agreed that the versions of the documents that are approved for release be declassified.

Payment of Charges

34. Upon completion of your request, the processing calculation exceeded the original estimate; however, as explained in my letter to you outlining the preliminary assessment of FOI charges, the charges cannot be more than originally estimated unless access to all documents is granted in full.

35. Accordingly, in order to finalise your request, you are required to pay the remaining [REDACTED]. An invoice for the outstanding balance will be forwarded to you within the next 5 working days. Documents will not be released until we receive your proof of payment of the invoice.

FOI Disclosure Log

36. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

Your Review Rights

Internal Review

37. Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. You must request a review, in writing, within 30 days of the date of this letter, or the date you receive the documents. Requests can be sent to:

Email: FOIReview@defence.gov.au
 Fax: 02 626 62112
 Post: Freedom of Information Directorate - Reviews
 Department of Defence
 CP1-6-029
 PO Box 7910
 CANBERRA BC ACT 2610

Australian Information Commissioner

38. Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992
Fax: 02 9284 9666
Post: GPO Box 2999
Canberra ACT 2601

Complaints

39. You may complain to Defence, the Information Commissioner or the Commonwealth Ombudsman about an action taken by Defence in the exercise of its power or the performance of its functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Department of Defence, your complaint can be addressed to Mr Tony Corcoran using the contact details below:

Email: tony.corcoran@defence.gov.au
Post: Tony Corcoran
Assistant Secretary Information Management and Access Branch
CP1-6-14
PO Box 7911
CANBERRA BC ACT 2610

40. Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)
Fax: 02 6276 0123
Post: Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

41. Contact details for the Information Commissioner are above.

42. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management

13 November 2015