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	NOTING BRIEF FOR CDF: OUTCOME OF ADFIS INVESTIGATION OF SOTG SHOOTING OF DETAINEE 3 OCT 2010	
	Branch: DLEGAL	Reference: F738186
For Information: CA; HMSC; PA AFPAC; SOCAUST; CJTF633; PM-ADF		

References:


- A. CJOPS NB to CDF dated 15 Aug 13 [F512790]
- B. ADFIS Service Police Report dated 10 Oct 13 [DSN-INV-ADF01-ADFIS-2012-1]

Purpose

1. The purpose of this brief is to provide you with the outcome of the ADFIS investigation into an incident that occurred on 3 Oct 2010 in which an SOTG member killed an Afghan in self-defence.

Recommendations

- 2. It is recommended that you:
 - a. **note** that a QA found that an SOTG ^{s33(a)(i)} shot and killed an Afghan male in self-defence on 3 Oct 10;
NOTED / PLEASE DISCUSS
 - b. **note** that I consider that the Afghan male was a detainee at the time he was killed;
NOTED / PLEASE DISCUSS
 - c. **note** that I provided PM-ADF with a copy of the QA for his consideration noting extant policy requires deaths of detainees to be treated as notifiable incidents;
NOTED / PLEASE DISCUSS
 - d. **note** that I have received the ADFIS Service Police Investigation Report which concludes that there is sufficient evidence to conclude that ^{s33(a)(i)} actions were lawful in the circumstances; and
NOTED / PLEASE DISCUSS

 B.A. POWER LTGEN CJOPS 10/10/2013	Comments:  M.D. BINSKIN, AO AIRMSHL A/CDF 10/10/2013	Miss B keep please.
	Point of Contact: CAPT Peter Bowers RAN, 106	
Phone: 02 6128-4080		

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note that I intend on taking no further action in this matter, except to provide advice s33(a)(i) advising him of the outcome.

NOTED / PLEASE DISCUSS

Background

3. As advised in reference A, following media inquiries, I directed a QA be conducted into an alleged shooting of a suspected insurgent by a SOTG s33(a)(i) in late 2010 during a tactical questioning session.

4. The QA confirmed that an incident occurred on 3 Oct 10 involving SOTG FE. It found that s33(a)(i) had tactically questioned two detainees in the presence of an interpreter. On completion of the tactical questioning, the interpreter left through the only door first, followed by the suspected insurgent, with s33(a)(i) in the rear. The insurgent paused in the doorway and grabbed a sickle knife from a ledge just above the doorway. s33(a)(i) and the insurgent then struggled. The insurgent's plasticuffs had separated and s33(a)(i) fired several shots, killing the insurgent.

5. I was, and remain, satisfied that s33(a)(i) acted in accordance with his ROE and that the lethal force he applied was a lawful exercise of force in self-defence. I also remain of the view that the deceased was an insurgent and was a detainee from the point of apprehension until his death (the use of plasticuffs of itself being a decisive factor in this assessment).

6. In light of my assessment and taking into account current detainee management policy, I referred the matter to ADFIS as a 'notifiable incident'.

ADFIS Report

7. The ADFIS investigation was lengthy and gathered much evidence. s42(3)(a) s42(3)(a)

s42(3)(a) ADFIS did not make any conclusion as to the deceased's status at the time of his death who is referred to throughout the Report as a 'military aged male'.

8. The ADFIS Report concludes that s33(a)(i) actions were lawful in the circumstances and that no disciplinary or administrative action is recommended. I agree with this conclusion.

9. I intend informing s33(a)(i) of the outcome of both the QA and ADFIS Report.

Strategic Communication Considerations

10. Given that media allegations, which gained considerable public interest, caused the review of this incident, it is essential that there be a proactive and transparent release to the public of ADF findings into this matter.

11. ADF has already engaged in the public sphere, through the publication of responses to Ian McPhedran's media enquiry on the ADF internet site, 'For the Record' page. This response occurred prior to the QA and subsequent review of the operational reporting in comparison to the media allegations.

12. A Comms Pack, including a media release, will be finalised to support public release of these findings.

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Prepared by: CMDR P.K. Campbell, SOI Legal (Global Ops).

Enclosure:

1. ADFIS Service Police Report dated 10 Oct 13 [DSN-INV-ADF01-ADFIS-2012-1]
[F738188]

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SERVICE POLICE REPORT

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Investigators:	Reference No:	Type of Report:
s47F [Redacted] s4	[Redacted]	s47F
[Redacted]		
ADF Investigative Service Brindabella Business Park PO Box 7927 Canberra ACT 2610		
Report in the Matter of:		
Shooting Death of a Detainee		

References:

- A. Service Police Assessment Report DSN-IR-ADF01-ADFIS-2012-1, dated 01 Nov 12
- B. Minute F552324 - *Referral to ADFIS of Operational Incident involving the shooting death of a detainee in Afghanistan on 03 Oct 10 by SOTG*, dated 17 Aug 12
- C. Quick Assessment Report F5055055 for A/CJOPS - *SOTG Incident 03 Oct 10*, dated 12 Jun 12
- D. DI(G) ADMIN 45-2 - *The Reporting and Management of Notifiable Incidents*
- E. Australian Federal Police Crime Operations correspondence, dated 18 Oct 12
- F. Conversation ODMP/ADFIS [Redacted] 29 Oct 12

Introduction

1. It will be recalled vide ref A that on 01 Nov 12, ADFIS commenced enquiries into an allegation that on 03 Oct 10, a Afghan National Military Aged Male (MAM) was shot and killed during Tactical Questioning (TQ) as part of an SOTG operation in Afghanistan.

Approving Officer:	[Redacted]	[Redacted]	10 Oct 13
s47F [Redacted]	s47F [Redacted]	s47F [Redacted]	10 Oct 13
<i>(Printed Name) (Rank/Appt) (Date)</i>			
Distribution:			
CJOPS	(via J06)		
PMADF			
s33(a)(ii) [Redacted]			
SOCOMD	(via S01 CM)		
File			

Background

2. On 13 Feb 12, civilian media reported an allegation that an Australian soldier had shot a suspected insurgent whilst undergoing TQ in Afghanistan. On 29 May 12, CJOPS directed a Quick Assessment (QA) be conducted, which was subsequently referred to HQ ADFIS vide refs B and C, IAW ref D, and as determined through consultation at refs E and F. ADFIS commenced a formal investigation into the incident on 01 Nov 12.

3. The circumstances surrounding this matter are that on 03 Oct 10, s33(a)(ii) s33(a)(i) and s33(a)(ii) were conducting operations in support of operation s33(a)(ii) in the vicinity of s33(a)(ii) District, Northern Kandahar Province. Following the clearance of a compound of interest (COI), approximately 30 MAM were held for further exploitation.

4. Shortly after TQ, conducted within a room of the COI by s33(a)(i) the attached s33(a)(i) a MAM reportedly attacked s33(a)(i) s33(a)(i) with a bladed weapon. It was apparent that the designated s33(a)(i) interpreter had just exited the room leaving s33(a)(i) alone with the MAM. s33(a)(i) subsequently retaliated and shot the MAM in self defence, which resulted in his death. The identity of the MAM was later reported to be s47F a suspected insurgent.

Action Taken

5. Initial consultation between ADFIS, AFP and ODMP established that the matter was suitable for investigation by ADFIS under DFDA jurisdiction, with provision for later review by the AFP if appropriate.

6. Enquiries were conducted to recover operational records pertaining to s33(a)(ii) and the operational reporting of the incident from s33(a)(ii) s33(a)(ii). A nominal roll of s33(a)(ii) members deployed in theatre at the time was also recovered.

7. In addition to the operational records recovered from s33(a)(ii) ADFIS conducted enquiries within Afghanistan in an attempt to recover other evidence. Included within those enquiries was a search for the identity and current location of the interpreter utilised by s33(a)(i) during the operation (on 03 Oct 10. After exhausting all feasible lines of enquiries, ADFIS (ii) was unable to identify or confirm the location of this potential witness.

8. Further enquiries conducted within Afghanistan confirmed that there was no UAV footage of the incident. Requests were submitted to s33(a)(i) to recover Detainee Records, TQ reports, Biometric registration and to conduct a detailed search of the s33(a)(ii) in an attempt to recover further relevant information. These enquiries also met with negative results. It is worthy of note that during this line of enquiry, ADFIS Investigators were declined direct access to the SOTG records. From subsequent enquiries conducted it was established that s33(a)(ii) post the incident s33(a)(ii) however, despite being later submitted on return from the operation s33(a)(ii) could not be located.

9. On 05 Nov 12, s33(a)(i) was interviewed after caution by ADFIS in relation to this matter; however, declined to comment acting on legal advice. On 6 Aug F

s33(a)(i)
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s33(a)(ii)

13. s33(a)(i) was invited to be re-interviewed to afford him an opportunity to comment upon new evidence obtained; however, again he declined through his legal representative.

10. Enquiries were conducted with s33(a)(i) s33(a)(ii) who stated that he was appointed as s33(a)(i) and was within the COI when the incident occurred. Whilst his account was vague due to the time elapsed since the incident s33(a)(i) stated that he heard a series of gun shots within the room in which s33(a)(i) was conducting the TQ with a MAM. On immediately entering the room s33(a)(i) observed the MAM lying on the ground motionless with gunshot injuries. s33(a)(i) stated that he then had a conversation with s33(a)(i) in relation to the events, who informed him that he was attacked by the MAM wielding a bladed weapon and that he had shot him in self defence with his issued 9mm pistol.

11. Enquiries were conducted with s33(a)(ii) Russell Offices, Canberra, in order to recover s33(a)(ii) of the COI. These enquiries in conjunction with other witness evidence, established that the initial Grid References supplied in the post incident reporting and subsequently in the Quick Assessment were proven to be incorrect. These enquiries subsequently led to the exact location of the incident being identified as s33(a)(ii) s33(a)(ii)

s42(3)(a)

13. Enquiries to confirm the location of the deceased human remains (HR) and make application for exhumation was considered. However, due to evidence that the HR were left in situ at the COI, the Afghan cultural sensitivities and the historic nature of the incident, these enquiries were considered futile. Consideration was also given to attend the COI; however, due to the security situation and again the time elapsed, the scene forensic value was considered nugatory.

14. Enquiries were conducted with s47F s33(a)(ii) s33(a)(ii) in relation to providing subject matter expertise on whether there is (doctrinally) a mandated requirement for a third person (guard) to be present during TQ. s47F s47F stated that according to the Tactical Exploitation Handbook, there is an acknowledgement that a guard is not always possible due to the tactical situation, and it was not unusual for TQ to be conducted with only the s33(a)(ii) and interpreter present. s47F further stated that doctrinally it is not mandated that TQ has to be recorded by any means other than in TQ reports if relevant.

15. During the investigation of the one hundred and thirteen s33(a)(ii) members identified from the nominal roll, ADFIS traced and interviewed ninety-seven members. Sixteen members were unable to be located due to being either discharged, not contactable and/or unable to be located. In total twenty-two relevant statements were recorded. A breakdown of those enquires is as follows:

- a. Fifty-one members provided no information;

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- b. thirteen members stated they knew nothing of the incident and presented Legal Officer pre-prepared statements to that effect;
- c. nine members stated that they had a conversation with §33(a)(1) post incident when he claimed he acted in self defence;
- d. seven members declined to offer any assistance;
- e. six members stated that they had heard a series of gun shots, observed the deceased and saw §33(a)(1) exiting the room where TQ was being conducted;
- f. four members stated that they had heard a series of gun shots;
- g. four members stated that they had heard about the incident via radio/SITREP only;
- h. two members stated that they heard a series of gun shots and had observed the deceased; and
- i. one member was able to positively identify the location of the COI.

16. Enquiries conducted with §33(a)(1) §33(a)(1) §33(a)(1) established that he was within the COI at the time of the incident. §33(a)(1) stated that he had heard a series of gun shots and entered the room where the TQ had occurred. He stated that when he entered the room he observed the MAM motionless on the floor.

17. Enquiries conducted with §33(a)(1) §33(a)(1) established that he was within the COI at the time of the incident. §33(a)(1) stated that he heard a series of gunshots and shortly afterwards saw §33(a)(1) exit the room and he appeared shaken. He further stated that he entered the room and saw the deceased MAM lying on the ground near the doorway §33(a)(1) §33(a)(1) also observed a bladed weapon, similar to a hand held sickle, on the floor next to the MAM.

18. Enquiries conducted with §33(a)(1) established that he was attached to §33(a)(1) and within the COI at the time of the incident. §33(a)(1) stated that he had heard shouting coming from a room within the COI and then a series of gun shots. A short time later saw §33(a)(1) exit the room §33(a)(1) further stated that he entered the room to examine the MAM for communication devices and observed the deceased on the floor near the doorway with three gun shot wounds; one to the chest area, one in the throat and one between the eyes.

19. Enquiries conducted with §33(a)(1) §33(a)(1) established that he was positioned outside the door where §33(a)(1) was conducting the TQ. §33(a)(1) stated that he heard 'yelled' verbal warnings in Pashtu and then a series of gun shots from within the room. §33(a)(1) further stated that the door to the room was opened from inside and he saw §33(a)(1) §33(a)(1) visibly shaking. §33(a)(1) further stated that he and one other member of §33(a)(1) made entry into room and observed a MAM deceased on the floor. He recalled seeing a curved bladed knife lying on the floor next to the deceased MAM. i) 3 (

20. Enquiries conducted with §33(a)(1) §33(a)(1) §33(a)(1) established that he was positioned a few metres from the room where §33(a)(1) was conducting the TQ and heard §33(a)(1) yell 'Dresh, Dresh' (Pashtu for Stop). Shortly after, he heard a series of gun shots §33(a)(1) further stated that he and one other §33(a)(1) member were about to make entry ii) 3 a

into the room when s33(a)(i) exited looking visibly shaken. s33(a)(i) further stated that he entered the room and observed a deceased MAM on the floor. He too observed a curved sickle type blade with a wooden handle, on the floor.

21. Enquiries conducted with s33(a)(i) s33(a) established that he heard gun shots and was subsequently tasked with clearing the body of a deceased MAM. s33(a)(i) also observed a blade and recollected it was still in the hand of the deceased. He further stated that photographs of the deceased MAM were taken by the PE post incident, which were handed in to the Imagery Cell upon return to Tarin Kot.

22. Enquiries conducted with s33(a)(i) s33(a)(ii) established that he had been on a security task within the compound prior to the incident, providing security of the MAM prior to the TQ. s33(a)(i) stated that he observed several farming tools including long and short handled sickles on the wall within the MAM holding area. He also positively identified the COI from an aerial photograph of s33(a)(ii) village.

Investigation Limitations

23. ADFIS enquiries into this matter centred on the actions of s33(a)(i) and whether they were lawful in the circumstances. In view of this the investigation did not focus on the lack of reporting protocols and adherence to ref D, at the time in 2010. It is understood that incident reporting compliance has since been the subject of HQ JOC intervention and therefore ADFIS do not intend to make any further recommendation in this regard.

24. It is also worthy of note that initial canvassing of potential witnesses was hampered by s33(a)(i) s33(a)(ii) CoC insistence that every member spoken to by ADFIS must have received legal advice s33(a)(i) s33(a)(ii) beforehand. Furthermore during Mar 13, overall cooperation with the ADFIS investigation s33(a)(i) s33(a)(ii) was limited. By Jul 13, cooperation did improve and witness evidence corroborating s33(a)(i) s33(a)(ii) actions was eventually forthcoming. The investigation was problematic from the outset due to the historic nature of the incident and the post incident reporting in Oct 10.

Conclusion

25. As a result of protracted enquiries into this incident, there is sufficient evidence to support that s33(a)(i) actions were lawful in the circumstances, and no disciplinary or administrative action is recommended.

26. All original material collected during this enquiry is held by ADFIS and can be produced if required. This investigation has been recorded on the DSN s33(a)(ii) s33(a)(ii) s33(a)(ii) s33(a)(ii)

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ADF Investigator
ADF Investigative Service