



Reference: AB34100405

**FOI 171/17/18 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 relating to Australian Defence cooperation with, or support for, the Myanmar military in 2017’. In particular I am seeking documents which relate to:*

- a) training;*
- b) provision of equipment;*
- c) provision of other material support; and*
- d) intelligence sharing.*

*I exclude the following documents from my request:*

- publicly accessible documents;*
- duplicates;*
- drafts;*
- emails;*
- documents from Navy;*
- documents from RAAF and*
- documents about multilateral co-operation.”*

*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, excluding duplicates of documents.*

**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 12 documents, totalling 89 pages, as matching the description of the request in relation to *“Australian Defence cooperation with, or support for, the Myanmar military in 2017.... that relate to training ... and provision of other material support”*.

4. I identified no documents pertaining to *“Australian Defence cooperation with, or support for, the Myanmar military in 2017.... that relate to... provision of equipment ... or intelligence sharing”*.

5. The decision in relation to each document is detailed in a schedule of documents.

6. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

## Decision

7. I have decided to:
- a. release four (4) documents in full;
  - b. partially release eight (8) documents 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 section 33 [Documents affecting national security, defence or international relations];
  - c. refuse access to documents 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 material within documents that was irrelevant to the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

## Material taken into account

8. 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 version 1.4 dated December 2016 (the Guidelines); and
  - e. advice provided by Rachelle Warner and Officers within International Policy Division, Department of Defence, Army Headquarters, and by the Department of Foreign Affairs and Trade.

## Reasons for decision

### Section 24A (1) of the FOI Act

9. Section 24A(1) of the FOI Act states:

*24A Requests may be refused if documents cannot be found, do not exist or have not been received*

*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. I am satisfied that searches have been conducted by staff of the International Policy Division for documents relating to “*Australian Defence cooperation with, or support for, the Myanmar military in 2017.... that relate to training ... and provision of other material support*”. No search identified the documents matching the scope of (items 1(b) and (c).

11. Based on the above, I am satisfied that no documents could be found matching the scope of this request. Accordingly, I have decided to refuse access under section 24A of the FOI Act.

### **Section 33(a) – Documents affecting national security, defence or international relations**

12. Section 33 of the FOI Act exempts documents that would, or could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth. I have identified information within the documents that, if released, could jeopardise Australia's security and our relationship with Myanmar.

13. Some of this information relates to the capabilities of the respective defence forces and to training requirements and priorities. I am of the view that the disclosure of this information could reasonably be expected to cause damage to the security or the defence of the Commonwealth by providing adversaries with a military advantage. It would likely have a similar effect on Myanmar.

14. The release of some information found in these documents would damage Australia's ability to maintain a good working relationship with Myanmar, other governments and international organisations. The disclosure of the information may also diminish the confidence another country would have in Australia as a reliable recipient of its confidential information, making that country or agency less willing to cooperate with Australian agencies in the future.

15. In evaluating the potential harmful effects of disclosing sensitive information in the documents referred to at paragraph 7(b), 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 when combined with other pieces of information.

16. I have therefore decided to exempt this information under subsection 33(a) of the FOI Act.

### **Section 33(b) – Documents communicated in confidence**

17. Subsection 33(b) of the FOI Act exempts information communicated in confidence to the Australian Government or agency by another government or one of its authorities.

18. I have identified documents and information communicated in confidence to the Australian Government by the Myanmar Government in regards to our training relationship. This information was communicated in a confidential forum and provided under the understanding that it would not be provided to a third party.

19. In evaluating the potential harmful effects of disclosing information communicated in confidence to the Commonwealth in the documents referred to at paragraph 7(b), 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 when combined with other pieces of information.

20. I have therefore decided to exempt this information under subsection 33(b) of the FOI Act.

### **Further Information**

21. The information contained in Serial 4 is an out of date document, and the latest version appears on the DFAT website at:

<http://dfat.gov.au/geo/myanmar/Pages/myanmar-country-brief.aspx>

22. Some of the documents matching the scope of this request contained a dissemination limiting marker. As the documents are now approved for public release, the marker has been struck through.

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**Cameron Heath**  
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