



P246408

**FOI 274/16/17 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 in hard copy or electronic form identified by reasonable searches of the department’s records confirming and/or specifying the dates, times and/or locations of all Australian strikes in Iraq 01 to 26 March 2017 and the outcomes in terms of the number of military and civilian casualties of airstrikes carried out by Australian forces in the Mosul Jadida neighbourhood, and/or describing, recording investigations of and assessing the circumstances of Australian involvement in civilian casualty incidents related to air strikes in the Mosul Jadida neighbourhood.”*

**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 identified 52 documents matching the description of the request in relation to *‘the dates, times and/or locations of all Australian strikes in Iraq 01-26 March 2017’* which correspond with *‘airstrikes carried out by Australian forces in the Mosul Jadida neighbourhood.’*

4. I identified no documents pertaining to *‘the outcomes of military and civilian casualties’* and no documents pertaining to *‘describing, recording investigations of and assessing the circumstances of Australian involvement in civilian casualty incidents related to air strikes in the Mosul Jadida neighbourhood’*.

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

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

**Decision**

7. I have decided to:

- a. partially release 7 documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that deleted material is considered exempt under section 33(a)(i) [documents affecting national security] of the FOI Act;
- b. deny access to 40 documents that are defence intelligence documents, in relation to which Defence is exempt from the operation of the FOI Act pursuant to section 7(2C)(a)[exemption of certain persons and bodies];

- c. deny access to 5 documents on the grounds that deleted material is considered exempt under section 7(2C)(b)[exemption of certain persons and bodies] and/or section 33(a)(i) [documents affecting national security] of the FOI Act; and
- d. refuse access to documents 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.

### **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 (the Guidelines); and
  - e. advice received from Headquarters Joint Operations.

### **Reasons for decision**

#### **Section 7 – Exemption of certain persons or bodies**

9. Section 7(2C) of the FOI Act (supplemented by Schedule 2 Part II) lists agencies that are exempt from the operation of the Act in relation to particular types of documents.

10. Pursuant to that section, Defence is exempt from the operation of the FOI Act in relation to the 40 documents referred to at paragraph 7(b) above as they are defence intelligence documents.

11. In addition, the 5 documents referred to at paragraph 7(c) are pro-forma records with details added in relation to Australian air strikes. After examining the information contained in the pro-forma records, I determined that some information was from defence intelligence documents, which are exempt from the operation of the FOI Act as detailed in paragraph 9 above.

#### **Section 33 – Documents affecting national security**

12. Section 33(a)(i) of the FOI Act exempts documents that affect Australia's national security.

13. In evaluating the potential harmful effects of disclosing information in the documents referred to at paragraph 7(a) and 7(c), I have 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.

14. The 7 documents referred to in paragraph 7(a) above are Mission Reports (MISREP), which are standard reports completed after Australian aircraft complete a mission. After examining the information contained in those mission reports, I have determined that the documents contain some information in relation to tactics, techniques and procedures, 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.

15. I have therefore determined that some material contained in these documents is exempt under section 33 of the FOI Act. However, pursuant to subsection 22(1) of the FOI Act, I have determined that the 7 MISREPs are to be released with exempt and irrelevant material deleted.

16. The 5 documents referred to at paragraph 7(c) are pro-forma records with details added in relation to Australian air strikes. After examining the information contained in the pro-forma records, I determined that some information revealed details of Australian rules of engagement, 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.

### **Section 22 – Access to edited copies with exempt or irrelevant material deleted**

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 documents 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.

18. As a result, I have denied access to the 5 documents referred at paragraph 7(c), as specified in the schedule.

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

19. 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.*

20. No documents were identified pertaining to *'the outcomes of military and civilian casualties'* and no documents pertaining to *'describing, recording investigations of and assessing the circumstances of Australian involvement in civilian casualty incidents related to air strikes in the Mosul Jadida neighbourhood'*.

21. In identifying documents pertaining to these aspects of the request, searches for records held at both Headquarters Joint Operations Command and the relevant theatre operational headquarters were conducted. An initial search was conducted of these records to identify all Australian strikes in the Mosul Jadida neighbourhood for the relevant periods. Once these strikes were identified, further searches were conducted to identify all records associated with these strikes.

22. Based on the above, I am satisfied that no documents exist matching this portion of the request. Accordingly, I have decided to refuse access under section 24A of the FOI Act.

**Further Information**

23. A number of the documents matching the scope of this request were classified. I have redacted exempt information and declassified the versions of the documents that are approved for release.

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GPCAPT Nicholas Cram  
Accredited Decision Maker  
Headquarters Joint Operations Command

May 2017