



Australian Government
Department of Defence

Reference: AM2561378

FOI 326/15/16 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:

“...copies of documents on - and photographs of – the weapons seized by the crew of the HMAS Darwin from a dhow sailing off the coast of Oman in late February 2016 (see <https://combinedmaritimeforces.com/2016/03/06/hmas-darwin-seizes-large-weapons-cache/>). Of particular interest are any photographs of the manufacturer’s markings (e.g. serial/lot number, model, date of manufacture, etc). The time frame for this request is 1 February 2016 to 19 April 2016.

Exclude personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope. Also excludes duplicates of document.”

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 7 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 5 documents, on the grounds that the deleted material is considered exempt under section 47F [public interest conditional exemptions-personal privacy] and 33 [Documents affecting national security, defence or international relations] of the FOI Act; and
 - b. partially release 1 document, on the grounds that the deleted material is considered exempt under section 33 [Documents affecting national security, defence or international relations] of the FOI Act.
 - c. deny access to 1 document, on the grounds that the material is considered exempt under section 33 [Documents affecting national security, defence or international relations] 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 received from HQ JTF 633 & Maritime Operational Support Group(CMF); and
 - f. Foreign government consultation

Reasons for decision

Section 22 – Edited copies with exempt or irrelevant matter deleted

8. Section 22 of the FOI Act provides that if an agency or Minister decides to:

(i) refuse access to an exempt document; or

(ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access;

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

9. Considering all of the above, I decided that it was reasonably practicable to remove the irrelevant material, specifically information that was not related to the weapons seized by the crew of HMAS Darwin as stated in the scope of the request and release the document in that form.

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

10. I decided to exempt material from release, in part, pursuant to subsection 33(a)(i) of the FOI Act. I was satisfied that the relevant material is exempt under subparagraph 33(a)(i) of the FOI Act because it is of a sensitive nature, and pertains to information relating to ADF operations.

11. I formed the view that, if this information was disclosed it could reasonably be expected to cause damage to the security of the Commonwealth if an adversary could identify and target key individuals involved in ADF operations in order to gain access to operational information, thus compromising the capability of the ADF. In making the above decision, I took into account paragraphs 5.33 of the OAIC Guidelines.

Section 33(a)(iii) – International relations

12. 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. Paragraph 5.30 of the Guidelines describes international relations 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.

13. The documents within the scope of this request contain information which, if released, could reasonably be expected to damage the international relations of the Commonwealth. If this information were to be publicly released without authority it could diminish the confidence that country has in Australia as the recipient of confidential information and therefore limit the Commonwealth's ability to receive information from this country in relation to similar matters in the future.

14. As part of my consideration I undertook foreign government consultation and considered that response in my decision.

Section 47F - Personal privacy

15. Section 47F(1) of the FOI Act provides that a document is conditionally exempt if 'disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person)'.

16. In making my decision, I considered whether:

- a. the document contained personal information;
- b. the disclosure of the personal information would be unreasonable; and
- c. whether the disclosure of this information would, at this time, be contrary to public interest.

Personal Information

17. The information deleted from the requested documents under section 47F is personal information, including names, work email addresses and telephone numbers of Departmental officers involved in the specific tasks covered by these documents. As a person's identity is apparent or reasonably ascertainable from the deleted information, I have decided that it constitutes personal information.

Unreasonable to disclose

18. In determining whether release of the above personal information is unreasonable, I took into account:

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

19. Against these criteria, I found:

- a. the deleted material is not well known;

- b. the person to whom the information relates is not widely known to be (or to have been) associated with the matters dealt with in the documents; and
- c. the deleted information is not available from publicly accessible sources.

20. As described in paragraph 6.14 of the Guidelines, normally where individuals have been identified as acting in their official capacity, their personal information would not be deleted as this would not constitute an unreasonable disclosure of personal information. However, paragraph 6.141 provides examples of when disclosure of personal information of a Departmental employee might be unreasonable. In this case, some of the names and contact details could be linked through publicly available information to identify particular operational planning and routine activities which have been removed under s33(a)(i) above. Disclosing these details could also result in unsolicited contact with officers within operational sensitive roles,

Sections 47F - Public interest considerations

Factors in favour of disclosure

21. In determining whether to release the documents, I considered the guidelines provided by the Australian Information Commissioner, together with a range of factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to the public interest. Specifically, I considered if disclosure of the document would:

- a. promote the objects of the Act,
- b. inform debate on a matter of public importance,
- c. promote effective oversight of public expenditure, and
- d. allow a person to access her or his personal information.

22. In reviewing the request, I decided that releasing the requested documents may promote some of the objects of the FOI Act.

23. Regarding the deletions made in accordance with section 47F of the FOI Act, there is a public interest in protecting the privacy of individuals whose personal details appear in documents. This includes, inter alia, information of the nature described at paragraph 20. Accordingly, I have decided that the section 47F deletions would not inform debate on a matter of public importance, nor would their release promote effective oversight of public expenditure or prevent the applicant's access to their personal information.

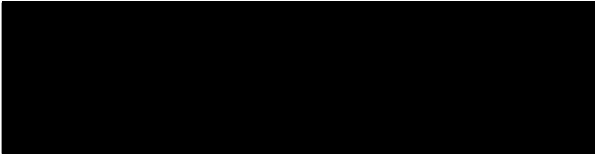
24. Conversely, the release of this deleted information could reasonably be expected to result in a decline in confidence in Defence's ability to maintain the privacy of its members and other third parties.

25. In deriving my decision, I also considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act. I advise that none of the irrelevant factors have been taken into account in making my decision. After assessing of all these factors, I have decided that the harm that could arise from disclosure of the personal information far outweighs any favourable public interest factors that could be gained from its release.

Further Information

26. 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.

Yours sincerely



✓ Colonel Michael Collie
Accredited Decision Maker
Headquarters Joint Operations Command

22 June 2016