



Australian Government
Department of Defence

Reference: OPMADF/2017/OUT/129223

FOI 351/16/17 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:

I am seeking access to documents, specifically reports, executive/ministerial briefings and attachments, photos/CCTV/video footage (including footage from mobile phones, body worn cameras) produced since 1 January 2016, relating to soldiers/officers/ADFA personnel caught for import/export offences and the military court findings/results and/or penalties/punishment.

Please exclude duplicates, documents that have already been publicly released, media reports/articles/releases and correspondence with media. Please note, I do not consent to documents/footage being deemed irrelevant without consultation, but I do consent to being provided edited copies of documents/footage with personal information redacted/pixillated.

Excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request.

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 six 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/Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:
 - a. release one document in full;
 - b. partially release four 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 37 [documents affecting the enforcement of law or protection of public safety] and/or section 47F [public interest conditional exemptions-personal privacy] of the FOI Act;
 - c. deny access to one document of the request under section 37 [documents affecting the enforcement of law or protection of public safety] of the FOI Act;

- d. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) 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; and
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);

Reasons for decision

Section 37 – Documents affecting the enforcement of law or protection of public safety

- 8. I found that two documents contained material which, if disclosed, could reasonably be expected to prejudice the conduct of an investigation of a possible breach of the law.

- 9. Section 37(2)(b) of the FOI Act provides:

A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures

- 10. In forming my decision, I had regard to paragraph 5.111 of the Guidelines which states that to be exempt under section 37(2)(b), “there must be a reasonable expectation or a real risk of prejudice to the effectiveness of that investigative method or procedure.”

- 11. I found that the document if released would disclose methods used to detect illegal material entering Australia, and would compromise the decision making process in determining the circumstances and evidentiary thresholds that may, or may not lead to an investigation.

- 12. I therefore consider that the material is exempt under section 37(2)(b) of the FOI Act.

Section 47F - Personal privacy

- 13. Upon examination of the documents, I found that some of them contained personal information of ADF personnel, such as names belonging to persons other than the applicant. In accordance with subsection 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:

- 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 documents
- c. the availability of the information from publicly accessible sources.

14 Against these three criteria, I found that:

- a. the specific pieces of personal information relating to the individuals are not well known
- b. the persons to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the document
- c. this specific information is not readily available from publicly accessible sources

15. Noting the above findings, I have decided that disclosure of the specific information would be an unreasonable disclosure of personal information belonging to other individuals. Accordingly, I consider that the material is conditionally exempt under section 47F of the FOI Act.

Section 47F - Public interest considerations

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

17. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factor is that disclosure may promote some of the objectives of the FOI Act, as information held by the Government is a national resource.

18. In coming to my decision, I had regard to the Guidelines, specifically paragraph 6.22 in regard to public interest factors against disclosure and found that the identified material, if released, could reasonably be expected to prejudice the protection of an individual's right to privacy.

19. While I note the release of this material would be of some interest to the applicant, it would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

20. On balance, I believe the potential prejudice to the privacy of persons other than the applicant outweighs any potential benefit from promoting the objects of the Act. In coming to the above decision, I considered subsection 11 B(4) [irrelevant factors] of the Act. None of these factors were taken into account. I therefore decided that it would be contrary to the public interest to release the identified information under sections 47E and 47F of the FOI Act.

Further Information

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

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e.lewis

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WGCDR T. Lewis
Accredited Decision Maker
Joint Service Police Group [JSPG]

July 2017