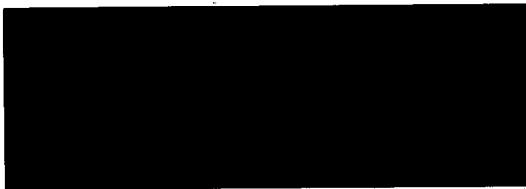





**Australian Government**  
**Department of Defence**

Freedom of Information  
CPI-6-001  
PO Box 7910  
CANBERRA BC ACT 2610  
Tel: 02 626 62200  
Fax: 02 626 62112  
FOI@defence.gov.au

Our reference: FOI 401/14/15



By email: 

Dear 

### **NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST**

I refer to your email, dated 12 June 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

*"[Item 1] the most recent summary brief or computer-generated report detailing ex gratia payments made under the Tactical Payment Scheme, by purpose, operation and/or date, since 1 January 2013, and*

*[Item 2] any ministerial briefing note or report on the scheme potentially being utilised as part of Operation Sovereign Borders."*

On 16 June 2015 our office wrote to you to advise you of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. You provided the receipt for your payment of the required deposit on 19 June 2015. As such, the statutory deadline for processing your request was 15 July 2015.

On 9 July 2015 you agreed under section 15AA of the FOI Act to extend the deadline for receiving this decision to the 22 July 2015.

The purpose of this letter is to provide you with the decision relating to the documents that are the subject of your request.

#### **FOI decision maker**

Group Captain Ralph Kettle, Headquarters Joint Operations Command, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

#### **Documents identified**

Group Captain Kettle identified 3 documents as matching the scope of Item 1 of your request. No documents have been located in respect of Item 2 of your request.

The decision in relation to each document is detailed in a schedule of documents, which will be provided when the documents are released to you.

When documents are released, you will note that for ease of reference and for the purpose of processing this request, the decision maker has added an FOI Item number to each of the documents, which corresponds with the schedule.

### **Decision**

Group Captain Kettle has decided to partially release Serials 1 to 3 with deletions made in accordance with subsection 22(1) [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 subparagraph 33(a)(ii) [the defence of the Commonwealth], subparagraph 33(a)(iii) [the international relations of the Commonwealth], section 47E [public interest conditional exemptions – certain operations of agencies] and section 47F [public interest conditional exemptions – personal privacy] of the FOI Act.

With regards to Item 2 of your request, Group Captain Kettle has decided to refuse access to the requested documents under section 24A [documents cannot be found, do not exist or have not been received] of the FOI Act.

### **Material taken into account**

In making his decision, Group Captain Kettle 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. the Principles on open public sector information issued by the Information Commissioner; and
- f. advice received from officers within the department.

### **Reasons for decision: Item 1 of your request**

#### **Material deleted pursuant to section 22 of the FOI Act**

Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document, consideration must be given to releasing the documents with the exempt material removed.

#### **Documents affecting national security, defence or international relations – section 33 of the FOI Act**

Where access has been denied under section 33 of the FOI Act, Group Captain Kettle considered that the deleted material would, or could reasonably be expected to, cause damage to the defence and/or international relations of the Commonwealth.

In applying this exemption, he considered the likelihood of damage occurring as a result of the release of the material that he considered to be exempt under section 33. In regards to the terms 'would reasonably be expected to' and 'damage', the Guidelines provide:

*5.13 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of the documents.*

*5.14 The use of the word 'could' in this qualification is less stringent than 'would', and so requires no more than a degree of reasonableness being applied to deciding whether disclosure would cause the consequences. Therefore, the reasonable expectation refers to activities that might reasonably be expected to have occurred be presently occurring, or could occur in the future.*

.....

*5.25 Damage for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage was likely to result from disclosure of the documents(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments.'*

Having regard to these principles, Group Captain Kettle's considerations for denying disclosure of certain Tactical Payment Scheme (TPS) details included the following:

- a. Jeopardise mission accomplishment and compromise force protection, given the fragile social environment in the designated country.
- b. Have the propensity to create a local economy with false claims or contrived incidents and unrealistic expectations on maximum payments.
- c. Inadvertently divulge information provided by coalition partners engaged in the determination of payment amounts.
- d. Be dangerous to the safety of the recipients and prejudice the effectiveness of Australia's current operations in the designated country.

**Damage to defence of the Commonwealth - Section 33(a)(ii)**

He is satisfied that the relevant material is exempt under subparagraph 33(a)(ii) of the FOI Act because it details limitations on the ADF's freedom of action. If this information was to be released it would inform adversaries of both the likely current and future limitations on the ADF's freedom of action, which would place the ADF at a tactical disadvantage and could expose ADF members to unnecessary risk. The Guidelines relevantly state that 'defence of the Commonwealth' includes:

5.28 ...

- *meeting Australia's international obligations*
- *ensuring the proper conduct of international defence relations ...[and]*
- *protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

Accordingly, Group Captain Kettle decided to exempt certain information from release under subparagraph 33(a)(ii) of the FOI Act, on the basis that its disclosure would, or could reasonably be expected to, cause damage to the defence of the Commonwealth. The disclosure of specific details of individual payments made under the TPS, such as category of loss, details of the incident, payment approval and payment made are not made public for reasons of operational sensitivities.

Australian troops continue to operate in Afghanistan, albeit in reduced numbers. As such it would be neither prudent nor reasonable to release TPS details that could compromise these and potential possible future ADF activities. In the context of these considerations, Group Captain Kettle decided to remove details contained in the Tactical Payments spreadsheets comprising the reason for the payment, its categorisation, the details of the incident for which the payment was made and the amount paid.

#### **Damage to the international relations of the Commonwealth - Section 33(a)(iii)**

Subparagraph 33(a)(iii) exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. 'International relations' has been interpreted 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.

The disclosure of specific details of individual payments made under the TPS, such as category of loss, details of incident, payment approval and payment made are not made public for reasons of operational sensitivity and also international relations. In this context, Group Captain Kettle has decided to remove details contained in the Tactical Payments spreadsheets comprising the reason for the payment, its categorisation, the details of the incident for which the payment was made and the amount paid.

The release of such information could reasonably represent a breach of Australia's responsibility to protect Coalition tactics, techniques and procedures relating to the management of compensation payments within Afghanistan and damage relationships with coalition partners who have shared such information. In making his decision Group Captain Kettle had regard to the possibility that release of information could inadvertently divulge information provided by coalition partners engaged in the determination of payment amounts. This information could reasonably and foreseeably compromise information provided by Coalition allies on their respective schemes and partnering operations and impact negatively on Australia's international relations.

#### **Subsection 47E(d) – Documents affecting certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The disclosure of specific details of individual payments made under the TPS, such as category of loss, details of incident, payment approval and payment made are not made public for reasons of operational sensitivity. In this context Group Captain Kettle decided to remove detail of individual occurrences provided in the Tactical Payments spreadsheets as to the reason for the payment, its categorisation, the details of the incident for which the payment was made and the amount paid. Release of this information could compromise future operations.

Should the types of occurrence and the amounts involved become public knowledge, it is reasonable to believe that current ADF activities in Afghanistan, in the Middle East and future operations could be negatively affected by spurious claims for compensation, raised expectations and the development of a 'claims culture' that could cause an unreasonable diversion of resources necessary to administer such claims.

Additionally, details identifying specific payments under ROMAN, the Defence Finance processing system have also been refused under subsection 47E(d). ROMAN operates at the protected level. As links could be made between the dates and location information provided and the ROMAN payment amount, it is reasonable and prudent that this information not be made public for reasons already covered under the preceding paragraph.

Corresponding to these individual occurrences are the names of personnel who had first hand and detailed knowledge of the TPS incidents and were involved in payment approvals. Releasing the names of ADF personnel involved in the administration of TPS matters would disclose the names of Special Operations Task Group (SOTG) delegates and witnesses who have a protected identity status by virtue of their specialist role and task requirements and therefore restricting the release of this information is a well accepted national security principle. These personnel could again serve in that country and thus disclosure of their identity would reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency and put the safety and security of these personnel at risk.

#### **Public interest considerations - Section 47E**

In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Group Captain Kettle considered the Guidelines provided by the Australian Information Commissioner, together with a range of factors that favour access to a document as set out in subsection 11B(3) [public interest exemptions - factors favouring access] of the FOI Act. When making his decision he considered the extent to which the release of information could impact negatively upon, or jeopardise mission accomplishment and compromise force protection, given the fragile social environment in the designated country.

He considered the public interest in promoting the objects of the FOI Act have been satisfied and does not believe the release of operationally sensitive information would inform public debate on any matter of public importance in a meaningful way. Instead, he believes that the release of this information that could reasonably harm the Department's ability to perform its functions and this risk exceeds the public benefit of release. Group Captain Kettle also considered subsection 11B(4) [public interest exemptions - irrelevant factors] of the FOI Act. Accordingly, he was satisfied that on balance the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents.

#### **Section 47F - Documents affecting personal privacy**

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person). 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, he had regard to the following matters:

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

Against those criteria, he found that:

- a. the specific personal information is not well known to the general community;
- b. the person to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the documents; and
- c. the specific information is not readily available from publicly accessible sources.

In consideration of the above criteria, the disclosure of the names of individuals who administered and approved the TPS payments or received the TPS payments are not made public due to operational sensitivity and privacy requirements. In this context Group Captain Kettle has decided to remove the names of certain personnel who had a role in the handling, documentation and approval of the TPS payments, as well as those individuals who have received such payments.

Releasing the names of ADF personnel involved in the administration of TPS matters would disclose the names of certain personnel who by virtue of their specialist role and task requirements work closely with SOTG delegates and witnesses. Although not falling wholly under the protected identity status, Group Captain Kettle has determined that their identity should not be made public under section 47F. The personnel identified in the TPS spreadsheets could reasonably be expected to serve again in Afghanistan in support of current or future ADF commitments to that country and it would not be prudent to breach their privacy, safety and well being through public release of their personal details in connection with their continued association with SOTG personnel. Additionally, he found that the TPS spreadsheets contained the names of individual Afghan civilians who had received payments. He has determined that these names should not be released as such action could unreasonably breach their privacy and could put them at physical or financial harm.

#### **Public interest considerations - Section 47F**

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

In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, he considered the Guidelines provided by the Australian Information Commissioner, together with a range of factors that favour access to a document as set out in subsection 11B(3) [public interest exemptions - factors favouring access] of the FOI Act.

Group Captain Kettle considered the public interest in promoting the objects of the FOI Act have been satisfied and does not believe the release of personal information such as personnel identification, would inform public debate on any matter of public importance in a meaningful way. Release of personal details of ADF personnel in the context of sensitive TPS payment administration would represent an unreasonable breach of privacy and in the current threat climate could possibly open them to physical or financial harm during current or future operations. Under the same rationale, he found that the TPS spreadsheets contained the names

of individual Afghan civilians who had received payments, he determined that release of these names would unreasonably breach their privacy and could possibly open them to physical or financial harm.

In coming to the above decision, he also considered subsection 11B(4) [public interest exemptions - irrelevant factors] of the FOI Act. Accordingly, he was satisfied that on balance the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents.

**Reasons for Decision: Item 2 of your request**

**Section 24A -Requests may be refused if documents cannot be found or do not exist**

*'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.'*

With regard to Item 2 of your request, Group Captain Kettle decided to refuse access to the requested documents under section 24A [do not exist] of the FOI Act. In making his decision he was advised that neither Headquarters Joint Operations Command nor Joint Task Force 639 have provided any ministerial briefing note, summary brief or computer-generated report detailing ex gratia payments made under the Tactical Payment Scheme as part of OP SOVEREIGN BORDERS. This advice is provided by senior officers whose role is to closely monitor OP RESOLUTE operations in support of OP SOVEREIGN BORDERS, receive reports of sensitive operational activities, analyse what has transpired and issue supplementary orders so that Defence can best respond to such matters.

He would anticipate that Defence officers with these responsibilities have made these verbal and written commitments, confident that all concerned throughout the chain of command had conformed to the requirements of Chief of Joint Operations Directive 63/2013 which directs in detail, how sensitive operational matters are to be reported, managed and recorded. Operational staff with responsibilities for OP RESOLUTE activities were asked to undertake *Objective* (Defence's record management system) searches in response to this FOI request, to establish if any ex gratia payments had been made in connection with OP SOVEREIGN BORDERS and whether any ministerial briefing note or report on the scheme potentially being utilised as part of Operation Sovereign Border existed. No such documents were found.

Notwithstanding the above, Group Captain Kettle also oversaw the conduct of a number of *Objective* (Defence's record management system) key word searches against the specified criteria. No such documents were found.

### **Payment of Charges**

In order to finalise your request, you are required to pay the remaining [REDACTED]. Please find attached at Enclosure 1 a Payment Authorisation Form for the balance for you to complete and return.

### **Declassification of documents**

Three documents matching the scope of this request are classified variously as SECRET. I have agreed that the versions of the documents that are approved for release be declassified.

### **FOI Disclosure Log**

In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

### **Your Review Rights**

#### ***Internal Review***

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. You must request a review, in writing, within 30 days of the date of this letter, or the date you receive the documents. Requests can be sent to:

Email: [FOIReview@defence.gov.au](mailto:FOIReview@defence.gov.au)  
 Fax: 02 626 62112  
 Post: Freedom of Information Directorate - Reviews  
 Department of Defence  
 CP1-6-029  
 PO Box 7910  
 CANBERRA BC ACT 2610

#### ***Australian Information Commissioner***

Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
 Phone: 1300 363 992  
 Fax: 02 9284 9666  
 Post: GPO Box 2999  
 Canberra ACT 2601

#### ***Complaints***

You may complain to Defence, the Information Commissioner or the Commonwealth Ombudsman about an action taken by Defence in the exercise of its power or the performance of its functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Department of Defence, your complaint can be addressed to Mr Tony Corcoran using the contact details below:

Email: [Tony.corcoran@defence.gov.au](mailto:Tony.corcoran@defence.gov.au)



Post: Tony Corcoran  
Assistant Secretary Information Management and Access Branch  
CP1-6-14  
PO Box 7911  
CANBERRA BC ACT 2610

Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)  
Fax: 02 6276 0123  
Post: Commonwealth Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Contact details for the Information Commissioner are as on the previous page.

Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Michelle Rueckert  
Case Manger

22 July 2015

Enclosures:

1. Freedom of Information Payment Authorisation Form / refund