



Australian Government


Department of Defence

Office of the Chief Operating Officer

Freedom of Information and
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Our reference: FOI 136/12/13



By email: 

Dear 

1. I refer to your email, dated 10 October 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

"...Ministerial Submission or other formal document – whether draft or final – that has most recently advised the Minister for Defence, Stephen Smith, on the performance and readiness of the 4th Brigade."

2. 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

3. Group Captain A.J. McCormack, Director Future Military Commitments, is the authorised decision maker, under the FOI Act, in relation to your request.

Documents identified

4. Group Captain McCormack identified two documents as matching the description of your request:

Document 1 - Ministerial Submission MR-120701945 of 21 Sep 12; and

Document 2 - HQJOC Request for Information (RFI) 373-12 of 5 Oct 12.

Decision

5. Group Captain McCormack has decided to release the documents with material removed, in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, which is considered exempt under section 33 [documents affecting national security, defence or international relations] of the FOI Act.

6. In relation to Document 1, some material was not considered as it is material which originated from an agency considered exempt from the FOI Act. Further, some material was removed from Document 2 which is considered irrelevant to the scope of your request.

Material taken into account

7. In making his decision, Group Captain McCormack had regard to the following:

- a. the terms of your request;
- b. the content of the documents to which access was sought;
- c. advice from Defence officers with responsibility for matters relating to the documents to which access was sought;
- d. relevant provisions of the FOI Act;
- e. Defence's guidance material on the FOI Act;
- f. the Australian Information Commissioner's guidelines on FOI; and
- g. advice from Defence's in-house legal team.

Reasons for decision – Document 1

8. Group Captain McCormack advised that Document 1 consisted of the main document, being the covering ministerial submission, and three annexes (A, B and C). He noted that the ministerial submission is comprised almost entirely of information drawn from the above-mentioned annexes.

9. Group Captain McCormack advised that Annex A is an 'intelligence agency document' originating from the Office of National Assessments. He advised that Annex B is also an 'intelligence agency document' originating from the Defence Intelligence Organisation.

10. As such, and in accordance with section 7 of the FOI Act, Group Captain McCormack was not required to consider Annexes A & B.

11. Group Captain McCormack advised that Annex C is an assessment of the Afghan National Army (ANA) 4th Brigade by the International Security Assistance Force (ISAF). Group Captain McCormack determined that Annex C is an exempt document as disclosure would, or could reasonably be expected to, cause damage to:

- a. the security of the Commonwealth;
- b. the defence of the Commonwealth; or
- c. the international relations of the Commonwealth.

12. Group Captain McCormack noted that the public release of the information in Annex C would inform an adversary of the current and anticipated strengths and weaknesses of the ANA 4th Brigade. He further noted that this would be a dangerous tool in the hands of an adversary, allowing them to target weaknesses, while avoiding the strengths of the ANA 4th Brigade. This would place not only the ANA 4th Brigade, but also Australian and other members of the USAF at a significant tactical disadvantage and would unnecessarily expose them to additional risk. The public release of this information in Annex C would, or could, reasonably be expected to cause damage to Australia's international relations with Afghanistan and ISAF contributing nations. The release of the information could lessen the confidence of Afghanistan and ISAF contributing nations in Australia's ability to protect sensitive operational information.

13. Group Captain McCormack also determined that Annex C is an exempt document under section 33(b) of the FOI Act as disclosure would divulge information communicated in confidence by an internal organisation to the Commonwealth. Group Captain McCormack stated that the information was communicated by ISAF on a confidential basis.

14. Group Captain McCormack advised that given the nature and content of Annexes A, B and C, he determined that the main document of the MINSUB is exempt from disclosure for the following reasons:

- a. the main document includes information from Annexes A and B. In accordance with section 7(2A)(b) of the FOI Act, Defence is exempt from the operation of the Act in relation to the main document to the extent that it contains such information.
- b. for the reasons expressed in paragraph 12 above, Group Captain McCormack found that the main document is an exempt document as disclosure would, or could reasonably be expected to, cause damage to:
 - (a) the security of the Commonwealth;
 - (b) the defence of the Commonwealth; or
 - (c) the international relations of the Commonwealth.
- c. Further, Group Captain McCormack advised that for the reasons expressed in paragraph 13 above, the main document is an exempt document as disclosure would divulge information communicated in confidence by ISAF.

15. Notwithstanding the above, after considering section 22 of the FOI Act, Group Captain McCormack found that the main document and Annex C could be release with material removed which is considered exempt under section 33 of the FOI Act.

Reasons for decision – Document 2

16. Group Captain McCormack advised that the Request For Information (RFI) is a communication between Headquarters Joint Operations Command (HQJOC) and Headquarters Joint Task Force 633 (HQJTF 633). He further advised that HQJOC sought information from HQJTF 633, in preparation for the visit by the Minister for Defence to Afghanistan in October 2012, which included information on ANA 4th Brigade. HQJTF 633 advised that the Minister for Defence was provided with a copy of the RFI. Some information in the RFI about ANA 4th Brigade was sourced from ISAF. The RFI also contains information about current operations in Afghanistan that does not relate to ANA 4th Brigade.

17. Taking the above into account, Group Captain McCormack found that some material in the document, relating to matters other than the ANA 4th Brigade, is considered irrelevant to the scope of the request and has been removed in accordance with section 22 of the FOI Act.

18. Group Captain McCormack determined that the RFI is an exempt document under section 33 of the FOI Act for the reasons expressed in paragraph 12 above, as disclosure would, or could, reasonably be expected to cause damage to:

- a. the security of the Commonwealth;
- b. the defence of the Commonwealth; or
- c. the international relations of the Commonwealth.

19. Group Captain McCormack determined that the RFI is also an exempt document under section 33(b) of the FOI Act as disclosure would divulge information communicated in confidence by an international organisation to the Commonwealth. Group Captain McCormack also noted that the information in the RFI sourced from ISAF was communicated to the Commonwealth on a confidential basis.

20. Taking all of the above into consideration, Group Captain McCormack found that Document 2 could be released with material removed which was considered exempt under section 33 of considered irrelevant to the scope of the request, in accordance with section 22 of the FOI Act.

Payment of Charges

21. In our letter, dated 12 October 2012, the department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay charges for the administration of your request and paid the preliminary assessment deposit of [REDACTED] on 15 October 2012.

22. Upon completion of your request, the actual amount for processing exceeded the original estimate. However, as explained in paragraph 9 the above mentioned letter, the amount payable can only be more than the preliminary assessment if the decision is to release all of the documents requested in full.

23. Accordingly you are required to pay [REDACTED] in order to finalise your request. Please complete and return the form at Enclosure 1 to the FOI Directorate, this form is an agreement to pay charges and enables the FOI Directorate to continue processing your request without delay. Upon receipt of the form an invoice will be generated, noting this can take up to 3 business days. Details about payment of the invoice are on the form.

Rights of review

24. The FOI Act provides for rights of review of decisions. A copy of the fact sheet "Freedom of Information – Your Review Rights" setting out your rights of review is at Enclosure 2.

FOI Disclosure Log

25. 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 two working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions. I will advise you of the date for publication when the documents are dispatched to you.

Further advice

26. The FOI Act can be accessed online at: <http://www.comlaw.gov.au/Details/C2011C00803>

27. Should you have any questions in regard to this matter please contact me directly on (07) 3332 6359. Alternatively, the FOI team can also be contacted on the details at the top of this letter.

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

12 November 2012

Enclosures:

1. Freedom of Information Refund Processing Form
2. Fact Sheet: Freedom of Information – Your Review Rights