



Australian Government


Department of Defence

Office of the Chief Operating Officer

Freedom of Information and
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Our reference: FOI 318/11/12



By email: 

Dear 

1. I refer to your email, dated 29 May 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to documents relating to detainee management.
2. By email, dated 30 May 2012, you were advised that your request was not considered valid under the FOI Act. By email, dated 6 June 2012, you advised that you would like to proceed with the following revised scope:

"Pursuant to the FOI Act, we request all ministerial submissions and/or summary documents that cover the outcomes of investigations into substantiated allegations by detainees of mistreatment, that have:

- *been significant enough to report to government and*
- *emanated from Afghanistan and*
- *have been received by the ADF since 1 the August 2010"*

FOI Statutory deadline

3. By email dated, 20 July 2012, I sought your agreement, in accordance with section 15AA of the FOI Act to extend the FOI statutory deadline to provide the decision on your request to 28 August 2012. By email on the same day, you agreed to the extension.
4. 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

5. Mr Andrew Craig, Director Executive, International Policy is the authorised decision maker, under the FOI Act, in relation to your request.

Documents identified

6. Mr Craig identified 14 documents as matching the description of your request; a Schedule of Documents is at Enclosure 1.

Decision

7. Mr Craig decided to release five of the identified documents with material deleted, in accordance with paragraph 22(1)(b) [access to edited copies with exempt or irrelevant material removed] of the FOI Act, on the grounds that the deleted material is exempt under sections 33 [documents affecting national security, defence or international relations] and 47F public interest conditional exemptions – personal privacy] of the FOI Act. Mr Craig decided to deny access to the remaining nine documents under section 33 of the FOI Act. Some material was also removed from the identified documents in accordance with subparagraph 22(1)(a)(ii) of the FOI Act. His reasons are set out below.

Material taken into account

8. In making his decision, Mr Craig had regard to:
- the content of the identified documents in issue;
 - relevant provisions in the FOI Act;
 - the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the guidelines); and
 - advice from Headquarters Joint Operations Command and Military Strategic Commitments whose duties also relate to the matters referred to in the documents.

Section 22

9. Mr Craig advised that in order to help ensure that the Australian Government remains fully informed of all key 'operational' events, and in a timely manner, the Department of Defence provides the Minister for Defence with a 'Daily Operational Reporting Summary'. This daily brief covers key events pertaining to all of the Australian Defence Forces (ADF) current operations, and it is not restricted by location or topic. In this light, Mr Craig noted that the vast majority of information contained within the 'Daily Summaries' provided do not fall within the scope of your request, and as such have been removed in accordance with subparagraph 22(1)(a)(ii) of the FOI Act as the material is considered irrelevant to your request.

Exemption claims

Section 33

10. Mr Craig found that the identified documents contained sensitive information pertaining to ADF operations, including ADF techniques, tactics and procedures. Mr Craig considered that if this material were to be released it would inform adversaries of both the ADF's current and future capabilities, which would be a significant tactical disadvantage and could expose ADF members to unnecessary risk. Mr Craig found that several of the documents contained information pertaining to operational security provisions which have been made for the safety of deployed Defence members. If this information was released publicly it would place the safety of all deployed personnel at risk. Mr Craig is satisfied that the material described above meets the threshold of paragraph 33(a)(ii) of the FOI Act.

11. In reviewing the documents in question, Mr Craig found that they also contained detailed reports covering allegations of detainee mistreatment purported to have been committed by foreign officials, but reported through Australian reporting lines. Mr Craig considered that, to release such information could reasonably be expected to cause damage to the international relations of the Commonwealth, as such he decided to remove the material in accordance with paragraph 33(a)(iii) of the FOI Act.

Public interest conditional exemptions

Section 47F

12. Mr Craig advised that some of the documents contained the names and/or specific identification numbers allocated to all detainees taken by ADF officials. Mr Craig is satisfied that this information constitutes personal information, and its disclosure would be considered unreasonable.

13. Subsection 47F(2) requires that Mr Craig consider the following when addressing the personal privacy exemption:

- the extent to which the information is well known;
- whether the person to whom the information relates is known to be (or to have been) associated with the matter dealt with in the documents;
- the availability of the information from publicly accessible sources; and
- any other matters the agency or Minister considers relevant.

14. Mr Craig noted that while it is possible that this information is known to certain elements within Afghanistan, he is satisfied that it is not well known. He stated that the specific personal information, as it appears in the requested documents, would not be available from publicly accessible sources.

15. Mr Craig also noted that at worst, this information could be used by some disaffected elements to help seek retribution for perceived acts (either now or into the future).

16. Taking all of the above into account, Mr Craig is satisfied that the specific material is conditionally exempt under section 47F of the FOI Act.

Public interest considerations

17. Subsection 11A(5) of the FOI Act provides that conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest. The guidelines state (at 6.8-6.9):

The term 'public interest' is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered...

To conclude that, on balance, disclosure of a documents would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

18. Subsection 11B(3) of the FOI Act states *factors favouring access to the documents in the public interest include whether access to the documents would do any of the following:*

- (a) promote the objects of this Act*
- (b) inform debate on a matter of public importance*
- (c) promote the effective oversight of public expenditure*
- (d) allow a person to access his or her own personal information*

19. Mr Craig considered that the public interest in promoting the objects of the FOI Act have been satisfied, and, in his opinion, the removal of the identified information does not detract from the public disclosure of government held information. Mr Craig did not consider that the final 2 considerations are relevant in this instance, as the documents do not directly relate to public expenditure or contain your personal information.

20. After taking all of the above into consideration, on balance, Mr Craig considered that the disclosure of the personal information would be contrary to the public interest.

Payment of Charges

21. In our letter, dated 8 June 2012, after deducting the free decision making time, 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 10 July 2012.

22. Upon completion of your request, the actual amount for processing was calculated to be [REDACTED]. Accordingly you are required to pay [REDACTED] in order to finalise your request. Please complete and return the form at Enclosure 2 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

23. The FOI Act provides for rights of review of decisions. A copy of fact sheet "Freedom of Information – Your Review Rights" setting out your rights of review is at Enclosure 3.

FOI Disclosure Log

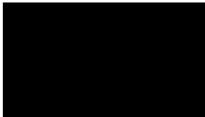
24. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within two working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions. I will advise you of the date for publication when the documents are dispatched to you.

Further advice

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

26. Should you have any questions in regard to this matter please contact me directly on (07) 3332 3259. 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

28 August 2012

Enclosures:

1. Schedule of documents
2. Agreement to pay charges form
3. Fact Sheet: Freedom of Information – Your Review Rights