



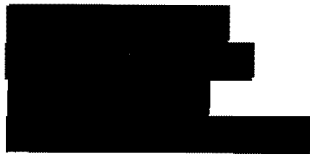
# Australian Government


## Department of Defence

Office of the Chief Operating Officer

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Our reference: 321/11/12



By email: 

Dear 

1. I refer to your email, dated 14 June 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

*"...(1) The final report of the Department of Defence Task Force investigation into the unauthorised release by WikiLeaks on 25 July 2010 of classified United States military documents relating to international military activities in Afghanistan.*

*(2) The final report of the Department of Defence Task Force investigation into the unauthorised release by WikiLeakse [sic] on 22 October 2010 of classified United States military documents relating to international military activities in Iraq."*

### FOI statutory deadline

2. In an email, dated 6 July 2012, in accordance with section 15AA [extension of time with agreement] of the FOI Act, I sought your agreement to a two week extension to the statutory deadline. My email advised that if you agreed to the extension the new statutory deadline on your request would be 6 August 2012. By return email, on the same day, you agreed to the requested extension. The Office of the Australian Information Commissioner (OAIC) were advised of the extension, as required by section 15AA(b) of the FOI Act on 6 July 2012. The purpose of this letter is to provide the decision on your request.

### FOI decision maker

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

### **Documents identified**

4. Mr Craig identified two documents as matching the scope of your request, being a 15 page report on Afghanistan (Document 1) and an 18 page report on Iraq (Document 2). Mr Craig advised that given the multifaceted nature of the 'reports', the only way to adequately respond to your request was to provide the final versions that were submitted to the Minister for Defence under a covering brief.
5. For ease of reference and for the purposes of processing this request, I have added the FOI number and document reference on the top right hand corner of each page of the documents.

### **Decision**

6. Mr Craig decided to release the identified documents with material deleted, 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 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 also removed some material from Document 2 in accordance with section 7 [exemption of certain person or bodies] of the FOI Act. His reasons are set out below.

### **Material taken into account**

7. 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 OAIC under section 93A of the FOI Act (the guidelines); and
  - advice from Headquarters Joint Operations Command and Military Strategic Commitments whose duties relate to the matters referred to in the documents.

### **Section 7**

8. Mr Craig found that Document 2 contained material which had originated from an intelligence agency listed at subparagraph 7(2A)(a) of the FOI Act. Specifically, Attachment A – paragraph 4, Attachment B – paragraph 2 & end of paragraph 9 and Attachment E in its entirety. As such, and in accordance with section 7 of the FOI Act, he did not consider those parts of Document 2 and they have been removed.

### **Exemption claims - section 33**

9. In reviewing the document, Mr Craig found that they both contained material which sets out sensitive information on Australian Defence Force (ADF) military capabilities as well as ADF techniques, tactics and procedures. If this material was to be released, he considered that 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 additional risk. Mr Craig also found that both documents contained information pertaining to the operational security provisions made for the safety of deployed Defence members. If this information were to be released publicly, it would place the safety of all deployed personnel at risk, not just those on the 'front line'. Mr Craig is satisfied that the material described above meets the threshold of paragraph 33(a)(ii) of the FOI Act, and is therefore considered exempt.

10. In relation to Attachment C to Document 2, Mr Craig found that it contained material which outlined methodologies that the WikiLeaks taskforce established to examine the leaked documents. Mr Craig considered that this information is also exempt under section 33(a)(ii) of the FOI Act, as its disclosure would reveal sensitive, highly classified search terms and parameters employed by the taskforce which would enable people to immediately identify material which could be considered of high value to adversaries.

11. Mr Craig also found that both documents contained material which discusses other military forces, including their capabilities and techniques, tactics and procedures. Mr Craig considered that this material meets the intent of paragraph 33(a)(iii) of the FOI Act, as its disclosure could reasonably be expected to cause damage to the international relations of the Commonwealth.

12. Additionally, Mr Craig found that the documents contained material which was provided to Australia in confidence by agencies from other national governments, as outlined in subsection 33(b) of the FOI Act. To release this information would run counter to 'maintaining good working relations with other governments' as set out in the guidelines. As such, Mr Craig was satisfied that the specific material is exempt.

#### **Public interest conditional exemptions – section 47F**

13. Mr Craig found that Document 2 contained the mobile telephone number of a Defence officer. He also found that Document 2, specifically Attachment C, contained a large number of names used for the purposes of establishing search parameters. Mr Craig is satisfied that this information constitutes personal information, and its disclosure would be considered unreasonable.

14. 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 matters dealt with in the documents;
- the availability of the information from publicly accessible sources; and
- any other matters that the agency or Minister considers relevant.

15. As far as the mobile telephone number is concerned, Mr Craig is satisfied that it is not well known. However, it is possible that the person whose mobile telephone number appears in the document is known to be associated with the matters dealt with in the documents. That said, its inclusion in the document is purely because of that person's position within the department at that time. Mr Craig considers it highly unlikely that Defence would publish the mobile telephone numbers of high ranking Defence officials.

16. In relation to the remaining personal information contained in the documents, Mr Craig considered that some of the information may be known, although he was not convinced that it would be considered to be 'well known'. However, given the reason the personal information appears in the identified documents Mr Craig is not convinced that the persons would be known to be associated with the issues addressed in the documents. The specific personal information, as it appears in the identified documents, would not be available from publicly accessible sources.

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

## Public interest considerations

18. Section 11A(5) provides that conditionally exempt matter must be released unless, in the circumstances, access to that documents 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 document 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 factor lies, based on the particular facts of the matter at the time the decision is made.*

19. Subsection 11B(3) 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 the FOI 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*

20. Mr Craig considered that the public interest in promoting the objects of the FOI Act has been satisfied, in his opinion, the removal of the personal information does not detract from the public disclosure of government held information. While he acknowledged that there may be a public interest in 'Wikileaks' generally, he considered that the removal of the identified personal information does not detract from any further debate on the matter. Mr Craig did not consider that the final two considerations were relevant in this instance as the documents do not relate to public expenditure or contain your personal information.

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

## Payment of Charges

22. In our letter, dated 19 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 28 June 2012.

23. Upon completion of your request, the actual amount for processing was calculated to be [REDACTED]. After deducting the free decision making time this amount is reduced to [REDACTED].

24. 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. The documents in the form approved for release will be dispatched as soon as practicable after receipt of the form. Please note it can take up to 3 business days for Defence Financial Services to generate an invoice. The invoice contains details about how to make payment; you should note that non payment of invoices can result in debt collection processes being initiated by Defence Financial Services.

**Rights of review**

25. 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 2.

**FOI Disclosure Log**

26. 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**

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

28. 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

6 August 2012

**Enclosures:**

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