



Australian Government  
Department of Defence

Ministerial and Executive Coordination and Communication Division

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ASFOIIM/OUT/2012/111  
FOI 321/11/12

31 August 2012



e-mail: [REDACTED]

Dear [REDACTED]

1. I refer to your email application on 14 August 2012 for *internal review*, under section 54 of the *Freedom of Information Act 1982* (FOI Act), of the decision by Mr Andrew Craig, Director Executive, International Policy Division, to release two documents to you with deletions, under subsection 22(1) [Access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds the deleted material was considered to be exempt under either section 33 [Documents affecting national security, defence or international relations] and section 47F [Public interest conditional exemptions-personal privacy] of the FOI Act. Some material was also considered exempt under section 7 from the operation of the FOI Act.

#### Contentions

2. In your application for *internal review* you contended that the Department of Defence submission to the Minister on or about 22 October 2010, was a document that was within the scope of your FOI application and, in fact, was the '*final report*'. Based on information provided by the International Policy Division, I am satisfied that the two documents identified as captured by your initial request, and provided to you, were the substantive '*final reports*', relating to Afghanistan (**Document 1**) and Iraq (**Document 2**).

3. The above notwithstanding I have, in accordance with the 'Objects' of the FOI Act, decided to take into consideration, as part of your application for *internal review*, the Ministerial Submission '*Conclusion of investigation into leaking of sensitive Afghanistan-related information by Wikileaks*' dated 22 October 2010, excluding Attachment B which has already been considered for release by Mr Craig (refer to **Document 1** above). The Ministerial Submission dated 22 October 2010 is referred to as **Document 3**.

#### Documents subject to the *internal review*

4. Three documents, consisting of 49 pages, were identified as containing material captured by your application for internal review. The details of the documents subject to your application for internal review are listed in the schedule at Enclosure 1. **Documents 1 and 2** were considered by Mr Craig and released to you with deletions. As indicated in paragraph 3 above, **Document 3** has been included as part of your application for *internal review*.

Objective ID:

5. Subsection 7(2A) of the FOI Act provides that agencies that are otherwise subject to the FOI Act are exempt from the operation of the FOI Act in relation to documents that originated with, or that have been received from, specifically intelligence agencies, including the Defence Intelligence Organisation (DIO). As such, I have not considered the material originated and received from DIO, identified in **Document 2**, as it is exempt under section 7 of the FOI Act.

#### **Reviewing officer**

6. I am authorised to make this decision under arrangements approved by the Secretary of the Department of Defence under section 23 of the FOI Act.

#### **Decision**

7. I have decided to release **Documents 1, 2 and 3** to you with deletions under subsection 22(1) of the FOI Act, on the grounds that the deleted material is considered to be exempt under either section 33 or section 47F of the FOI Act.

8. A copy of the documents in the form approved for release is at Enclosure 2. For easy of reference I have added the FOI request number, together with the document reference number, on the top right hand corner of the released documents.

#### **Material taken into account**

9. In arriving at my decision, I had regard to:
- a. the contents of the documents captured by your application for *internal review*;
  - b. advice from the International Policy Division;
  - c. the relevant provisions of the FOI Act; and
  - d. the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982*.

#### **Reasons for decision – section 33**

10. Section 33 of the FOI Act states:

*A document is an exempt document if disclosure of the document under this Act:*

*(a) would, or could reasonably be expected to, cause damage to:*

- (i) the security of the Commonwealth;*
- (ii) the defence of the Commonwealth; or*
- (iii) the international relations of the Commonwealth;*

*(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.'*

11. For the exemption to apply, there must be *real* or *substantial* grounds to expect the damage to occur, supported by evidence or reasoning.

12. *'Defence of the Commonwealth'* concerns the ability of the Australian Defence Force (ADF) and broader Defence organisation to protect Australia and its national interests, particularly as they relate to meeting Australia's international obligations and ensuring the proper conduct of international Defence relations, measures to deter and prevent foreign incursions into Australian territory, and the protection of the Defence Force from hindrance or activities which would prejudice its effectiveness.

13. Documents identified as exempt under subparagraph 33(1)(a)(ii) include details of tactics, techniques and procedures (TTPs) currently employed by the ADF in current operations in Afghanistan. Public release of this information could reasonably be expected to harm and cause damage to Australia's Defence interests. Material exempted under this subparagraph also shows Defence procedures relating to operational incidents and capability matters, exposure of which could be of interest to insurgents, terrorists or other potential adversaries in a manner that would affect adversely Australia's Defence interests.

14. *'International relations of the Commonwealth'* concerns the ability to maintain good working relations with other overseas governments and international organisations and to protect the flow of confidential information between them. There is no requirement to establish whether or not a document has or has not been released by an overseas authority.

15. Some of the documents include references to the activities of foreign governments. The release of this information could reasonably be expected to damage the maintenance of Australia's good working relations with the relevant foreign governments, including the flow of confidential information between Australia and our allies. I am satisfied that this information falls within the exemptions at paragraph 33(1)(a)(iii) and subsection 33(b) of the FOI Act.

16. Based on the above, I found that the material deleted in Documents 1, 2 and 3, under section 33 of the FOI Act is exempt.

#### **Reasons for decision - section 47F**

17. Document 2 contains *'personal information'* in the form of mobile telephone number of the Deputy Secretary Strategy.

18. Subsection 47F(1) of the FOI Act states: *'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)'*. 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.

19. The guidelines issued by the Australian Information Commissioner note that *'the personal privacy exemption is designed to prevent the 'unreasonable' invasion of third parties' privacy'*. 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; and
- d. any other matters that the agency considers relevant.

20. Against those criteria, I found that:

- a. the mobile telephone number of the Deputy Secretary Strategy is not well known;
- b. the information does not relate to you;
- c. the mobile details are not readily available from publicly accessible sources; and
- d. the material considered to be exempt is information that the individual would not wish to have disclosed to a third party without their consent.

21. I have found that the disclosure of the mobile telephone number would involve the unreasonable disclosure of the Deputy Secretary Strategy personal information for the reasons set out above.

#### **Public interest considerations – section 47F**

22. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the guidelines provided by the Australian Information Commissioner, together with a range of factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. Disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, the disclosure of this information would not increase public participation in Government processes, nor would it increase scrutiny or discussion of Government activities.

23. In coming to the above decision, I also considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act. Accordingly, I considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document. Therefore, I decided that it would be contrary to the public interest to release the information considered exempt under section 47F of the FOI Act.

#### **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 will publish the documents released to you within two working days after the documents are received by you.

#### **Rights of Review**

25. Should you be dissatisfied with my decision you have the right to seek review. Please find attached a copy of your review rights at Enclosure 3.

26. If you have any questions in relation to this matter please contact me.

Yours sincerely



Tony Corcoran

#### **Enclosures:**

1. Schedule of documents captured by your application for internal review
2. Copy of documents in the form approved for release
3. Rights of Review