



Australian Government
Department of Defence

Defence Reference: FOI 069/20/21

Army Reference: AHQ/OUT/2020/BQ17231319

FOI 069/20/21 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

“documents, namely all DCA directives and correspondence on administration and governance failings at the Special Air Service Regiment (SASR) between 1 July 2014 and 30 June 2017.”

Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents and documents to or from the applicant are excluded from this request.

FOI decision maker

2. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified seven documents, totalling 44 pages, as matching the scope of this request.

4. The decision in relation to each document is detailed in a schedule of documents.

5. I have added an FOI reference number and Document number to each of the documents which correspond with the schedule.

Decision

6. I have decided to:

a. release three documents in full

b. partially release four documents 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 considered exempt under section 33 [documents affecting national security, defence or international relations], and 47F [public interest conditional exemptions – personal privacy] of the FOI Act.

Material taken into account

7. In making my decision, I 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. advice provided by Special Operations Command and Defence Security and Vetting Service.

Reasons for decision

Exemption claim – Section 33(a)(ii) – damage to the defence of the Commonwealth

8. Section 33(a)(ii) exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the defence of the Commonwealth.

9. Material contained within the identified documents comprises information on the tactics, techniques and procedures employed by the Australian Defence Force during warlike operations.

10. In evaluating the potential harmful effects that the release of this information may have, I considered the information provided in the Guidelines on the mosaic theory. The Guidelines state:

5.39 When evaluating the potential harmful effects of disclosing documents that affect Australia's national security, defence or international relations, decision makers may take into account not only the contents of the document but also the intelligence technique known as the 'mosaic theory'. This theory holds that individually harmless pieces of information, when combined with other pieces, can generate a composite — a mosaic — that can damage Australia's national security, defence or international relations. Therefore, decision makers may need to consider other sources of information when considering this exemption.

5.40 The mosaic theory does not relieve decision makers from evaluating whether there are real and substantial grounds for the expectation that the claimed effects will result from disclosure.

11. I found that the document contained information that if disclosed, may add to what is already known or is in the public domain. By releasing this information, an adversary may be able to assemble a more detailed picture of the tactics, techniques and procedures used by the Australian Defence Force, thus reducing its capability and effectiveness to defend the Commonwealth.

12. I find that disclosure of the document would, or could reasonably be expected to, cause damage to the defence of the Commonwealth. Therefore the document is partially exempt under section 33(a)(ii) of the FOI Act.

Exemption Claim – Section 47F(1) - Personal Privacy

13. Upon examination of the document, I identified information, specifically names, rank and opinions of individuals other than the applicant.

14. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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
- c. the availability of the information from publicly accessible sources
- d. the effect the release of the personal information could reasonably have on the third party.

15. I found that the:

- a. specific personal information listed is not well known
- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents
- c. information is not readily available from publicly accessible sources.

16. The release of the names, ranks and opinions of individuals identified in the documents could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations – Section 47F(1)

17. I have found that some of the identified documents are conditionally exempt under section 47F(1) of the FOI Act. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed ‘unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest’.

18. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and it would allow the applicant access to their own personal information.

19. However, disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

20. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- a. the protection of an individual’s right to privacy
- b. the interests of an individual or a group of individuals
- c. an agency’s ability to obtain confidential information

d. an agency's ability to obtain similar information in the future.

21. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47F(1) of the FOI Act.

22. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

Further Information

23. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

Melanie.Cochbain

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Date: 2020.10.01 12:58:37 +10'00'

MP Cochbain

COL

Accredited Decision Maker

Army