



Objective Reference: AHQ/OUT/2022/BQ42346165

DEFENCE FOI 162/22/23 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:

Australian Army Minute – Exposure of SOTG VI Personnel to Environmental Hazards dated 29 May 2008.

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 one document, totalling 29 pages, as matching the scope of this request.

4. I have added an FOI reference number and page number to the document.

Exclusions

5. 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 sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Decision

6. I have decided to:

- a. partially release one document 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(a) [Documents affecting national security, defence or international relations] of the FOI Act
- b. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) 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).

Reasons for decision

Section 22 – Edited copies with exempt or irrelevant matter deleted

8. Section 22 of the FOI Act provides that if an agency or Minister decides:

- (i) *to refuse access to an exempt document; or*
- (ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access*

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

9. The document contains information including signatures and PMKeyS numbers. Defence has notified the applicant that this information is excluded from the request. I therefore consider this information as outside the scope of this request.

10. Considering all of the above, I decided that it was reasonably practicable to remove the material that did not fall within scope of this request and release the document in that form.

Section 33(a)(i) and (ii) – Documents affecting national security, defence or international relations

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

12. In regards to the terms ‘could reasonably be expected to’ and ‘damage’, the Guidelines provide:

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

5.31 The meaning of damage has three aspects:

- (i) *that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*

- (ii) *the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- (iii) *the organisation or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

13. 'Defence of the Commonwealth' is not defined in the Act, but has been held to include meeting Australia's international obligations, including deterring and preventing foreign incursions into Australian territory, and protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.

14. I identified information in the document which upon release could reasonably be expected to cause damage to the security and defence of the Commonwealth by publishing information concerning the identities of personnel and capabilities of the Army.

15. 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.

16. I find that disclosure of the information exempt under section 33(a)(i) and (ii) would cause, or could reasonably be expected to cause, damage to the security and defence of the Commonwealth by identifying personnel and capabilities. By releasing this information, an adversary may be able to assemble a more detailed picture of the capability of the Army, thereby reducing its effectiveness to secure and defend the Commonwealth. Further, adversaries could take steps or devote resources to target the personnel and counter the capabilities, the outcome of which would cause damage to the security and defence of the Commonwealth.

17. Accordingly, I have decided that the specified material is exempt pursuant to section 33(a)(i) and (ii) of the FOI Act.

Further Information

18. The document matching the scope of this request contained a dissemination limiting marker (DLM). Where a document has been approved for public release, the DLM has been struck through.

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LTCOL
Accredited Decision Maker
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