



DEFENCE FOI 543/22/23 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

ANY AND ALL documents (all documents) in relation to General CAMPBELL's visits to Afghanistan between the 1 January 2011 and the 31 December 2011.

INCLUDING BUT NOT LIMITED TO

Item 1. number of visits to Afghanistan;

Item 2. mode of travel to Afghanistan from Al Minhad Air Base (including provider);

Item 3. dates of travel and duration of visits;

Item 4. dates and places where General CAMPBELL was physically present during a specific action involving direct conflict between opposing forces.

Background

On 21 March 2023, the Department of Defence (Defence) wrote to the applicant seeking a 14-day extension of time under section 15AA [extension of time with agreement] of the FOI Act. On the same day, the applicant agreed with this extension.

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 three (3) documents as matching the description of items 1 and 2 of the request.

4. One (1) document has been created in accordance with section 17(1)(c) of the FOI Act to satisfy item 3 of the request. The document was created on the basis that:

- a. a written document can be produced containing the requested information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information; and
- b. producing the written document did not substantially and unreasonably divert resources of the agency from its other operations s17(2).

5. No documents were identified as matching the description of item 4 of the request.

Decision

6. I have decided to:

- a. release the document created under section 17 of the FOI Act in full;
- b. partially release one document in relation to item 1 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 47E(d) [public interest conditional exemptions – operations of agencies] of the FOI Act;
- c. refuse access to one document in relation to item 2 on the grounds that the material is considered exempt under section 33 [documents affecting national security, defence or international relations] of the FOI Act; and
- d. refuse access to item 4 under section 24A(1) of the FOI Act on the basis the documents cannot be found, do not exist or have not been received.

Exclusions

7. 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 considered final versions of documents.

Material taken into account

8. In making my decision, I had regard to:
- a. the terms of the request;
 - b. the content of the identified documents;
 - 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); and
 - e. advice provided by subject matter experts within Headquarters - Joint Operations Command (HQJOC).

Reasons for decision

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

9. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse access to a document, or part of a document, or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.

10. The documents contains exempt information such as names, email addresses, and telephone numbers of staff and third parties. Additionally, and in line with the exclusion outlined above, it also contains mobile phone numbers that do not relate to the scope of the request. I consider that it is reasonably practicable to remove the exempt and irrelevant material and release the documents to you in an edited form.

Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

11. Section 24A(1) of the FOI Act states:

Document lost or non-existent

- (1) *An agency or Minister may refuse a request for access to a document if:*
- (a) *all reasonable steps have been taken to find the document; and*
 - (b) *the agency or Minister is satisfied that the document:*
 - (i) *is in the agency's or Minister's possession but cannot be found; or*
 - (ii) *does not exist.*

12. Paragraph 3.90 of the Guidelines advise the kind of detail this statement of reasons could include to refuse a request under section 24A(l):

...the steps that were taken to search for the document, including the dates as to when the searches were conducted, the search parameters used...

13. To ensure that “all reasonable steps” have been taken in this request, every reasonable avenue of locating potential documents within the scope of this request have been exhausted.

14. HQJOC conducted extensive searches using search terms in relation to ‘*dates and places where General CAMPBELL was physically present during a specific action involving direct conflict between opposing forces*’ and advised that no documents were found. Searches were conducted from 1 January 2011 to 12 December 2011.

15. I am satisfied that “all reasonable steps” have been taken to locate the documents sought by the applicant for item 4 of the request. I am satisfied that the documents do not exist, and refuse access to this part of the request under section 24A(l) of the FOI Act.

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

16. Section 33(a)(i) 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...*

17. 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 organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

18. In regards to ‘security of the Commonwealth’, the Guidelines provide:

5.29 The term ‘security of the Commonwealth’ broadly refers to:

- a. *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests*
- b. *the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth’s international relations (see definition in s 4(5))*

19. I identified that the document, upon release, could reasonably be expected to cause damage to the security of the Commonwealth by disclosing classified information relating to the modes and methods of travel within an area of operation.

20. In evaluating the potential harmful effects of disclosing the information, I have taken into account the ‘mosaic theory’, which refers to individual pieces of information that may not be harmful in isolation, but may cause damage to the security of the Commonwealth when combined with other publicly available information and material released in the document.

21. Based on my consideration of the above, I am of the view that release of the document could reasonably be expected to cause damage to the security of the Commonwealth by making public information by compromising Australia’s strategy.

22. Accordingly, I am satisfied the document is exempt under section 33(a)(i) of the FOI Act.

Section 47E(d) – Public interest conditional exemptions – certain operations of agencies

23. Section 47E of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

24. In relation to section 47E(d) of the FOI Act, paragraph 6.123 of the Guidelines states that, where the document relates to certain operations of agencies, the decision maker must address whether ‘the predicted effect must bear on the agency’s ‘proper and efficient’ operations, that is, the agency is undertaking its expected activities in an expected manner.’

25. Upon examination of the document, I have identified staff names and contact details that are not publicly known.

26. I am satisfied that if the contact details of Defence personnel were made publicly available, it would have a substantial adverse effect on the proper and efficient operation of

existing public communication channels. Further, I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely effects the health, wellbeing and work of Defence personnel. Disclosure of personal details could, therefore, reasonably be expected to prejudice the operations of Defence.

27. Accordingly, I am satisfied that this information contained within the document is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations – Section 47E(d)

28. Section 11A of the FOI Act states:

(5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

29. I have identified that some of the information identified within the document is conditionally exempt under section 47E(d) of the FOI Act. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act; the relevant factors being whether access to the document would:

(a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);

(b) inform debate on a matter of public importance; and

(c) promote effective oversight of public expenditure.

30. I am of the view that 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).

31. 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.. the management function of an agency; and

d.. the personnel management function of an agency.

32. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel. As I have established, the release of the names and contact information of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of Defence personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.

33. For these reasons, I find that, on balance, the public interest factors against disclosure outweigh the factors for disclosure and the relevant information is exempt under section 47E of the FOI Act.

34. I did not take any of the irrelevant factors listed in section 11B(4) [irrelevant factors] into consideration in making this decision.

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Christopher [REDACTED] ADC
Colonel
Accredited Decision Maker
Headquarters Joint Operations Command