



DEFENCE FOI 808/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant) to the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

1.) Public affairs guidance summaries and/or emails to or from SOTG officers in relation to an SOTG raid, Afghanistan in August or September 2012 (date range: 20 August 2012 - 1 January 2014).

2.) Public affairs guidance summaries and/or emails to or from JTF633 public affairs officers in relation to an SOTG raid, Afghanistan in August or September 2012 (date range: 20 August 2012 - 1 January 2014).

Background

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FOI decision maker

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

Documents identified

7. I have identified two (2) documents falling within the scope of the request:
- 201209 – HQJTF633-OP SLIPPER–PAG 262 – SOTG ACTIVITIES dated 07 August to 11 September 2012; and
 - HQ ISAF SOF – Response to Query dated 01 September 2012.

Exclusions

8. Duplicates of documents are excluded from this request. Defence has only considered final versions of documents.

Decision

9. I have decided to partially release two (2) 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 sections 33 [Documents affecting national security, defence or international relations], and 47E(d) [Public interest conditional exemptions-certain operations of agencies] of the FOI Act.

Material taken into account

10. In making my decision, I have had regard to the:
- a. terms of the request;
 - b. content of the identified documents in issue;
 - c. relevant provisions of the FOI Act; and
 - d. Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

REASONS FOR DECISION

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

11. 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 an exempt document or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.
12. The documents contain exempt material. I am satisfied that it is reasonably practicable to remove the exempt material and release the documents to you in an edited form.

Section 33 – Documents affecting national security, defence or international relations

13. Section 33(a)(ii) 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:
....(ii) the defence of the Commonwealth;

14. In regard to the terms ‘would, or 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.

...

5.32 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.*

15. In regard to ‘defence of the Commonwealth’, the Guidelines, at paragraph 5.36, refer to Administrative Appeals Tribunal (AAT) decisions which indicate that the term includes:

- a. meeting Australia’s international obligations;
- b. ensuring the proper conduct of international defence relations;
- c. deterring and preventing foreign incursions into Australian territory; and
- d. protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.

16. The documents contain sensitive information relating to Special Forces tasking, composition and partner laydown, as well as other information relating to capabilities and operationally specific tactics, techniques and procedures. If released to the public domain, such information would, or could reasonably be expected to, cause damage to the defence of Australia because states or armed groups not aligned with Australia will have insight into operationally specific information prejudicing existing capabilities and the Australian Defence Force’s effectiveness.

17. Accordingly, I am satisfied that the information is exempt under section 33(a)(ii) of the FOI Act.

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

18. Section 47E(d) 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 the agency.*

19. The Guidelines, at paragraph 6.123, provide that:

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.

20. In the case of 'ABK' and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner found that where the direct contact details of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The Information Commissioner made this determination due to reasonable expectation that the release of direct contact details would undermine the operation of established channels of communication with the public. Further, the Information Commissioner accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.
21. I am satisfied that were the contact details of Defence personnel 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 affects the health, wellbeing and work of Defence personnel. Disclosure of names, email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.
22. Accordingly, I am satisfied that all staff information contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations - section 47E(d)

23. Section 11A(5) of the FOI Act states:

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.

24. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] 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;

...

(d) allow a person to access his or her own personal information.

25. In my view, 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).
26. 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:
 - the management function of an agency; and
 - the personnel management function of an agency.
27. 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 above, the release of the names, email addresses and phone numbers 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.
28. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.
29. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under sections 47E(d) of the FOI Act.

catherine. [redacted]

Digitally signed by

catherine [redacted]

Date: 2024.05.24 09:00:22 +10'00'

Catherine [redacted]

Air Commodore

Accredited Decision Maker

Associate Secretary Group

Department of Defence