



Australian Government

Department of Defence

SOCOMD DPN Objective: fBQ6788417

DEFENCE FOI 129/21/22 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:

'...about an element of the Australian Defence Organisation (Defence) created in 2006 and known by at least two names: the Special Operations Commitments Cell, and the Joint Inter-Agency Liaison Office (SOCC/JIALO).

The documents I seek are connected to FOI applications made by me in 2014, during which I was granted access to a Defence document called "JIALO INTITATING ADVICE" (see Defence FOI Nos: 311/13/14 and 350/13/14). Please note, I do not require that document as part of this request.

Specifically, I seek the following Defence documents, which are referenced in handwriting in the "JIALO INTITATING ADVICE" document (the handwriting is not clear so apologies if there are errors in my transcription of it):

- CDF/OUT/2006/532
- CDF DIR 16/06, 26 SEP 06
- CDF WIR 20/06 14 DEC 06

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 documents, totalling 10 pages, as matching the scope of this request.

Exclusions

4. 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, or those advised by the applicant that they are not required, are excluded from this request.

Decision

5. I have decided to:

- a. partially release three 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 47F [public interest conditional exemptions – personal privacy] 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

- 6. 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 33(a)(i) – damage to the security of the Commonwealth

- 7. Section 33(a)(i) exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the security of the Commonwealth.
- 8. 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.*

- 9. I identified material in the documents which upon release could reasonably be expected to cause damage to the security of the Commonwealth by making public a Defence capability that is highly classified.

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

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

11. 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.

12. I find that disclosure of the document exempt under section 33(a)(ii) as it would cause, or could reasonably be expected to cause, damage to the defence of the Commonwealth. The detail in each document identifies the establishment of a Defence capability that is highly classified, the disclosure of which would make the capabilities publically known. Nation States not allied with Australia could take steps or devote resources to counter the capability and therefore would cause damage to the defence of the Commonwealth. 'Defence of the Commonwealth' is not defined in the Act, but has been held to include meeting Australia's international obligations. Ensuring the proper conduct of international defence relations, deterring and preventing foreign incursions into Australian territory, and protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.

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

Section 47F - Personal Privacy

14. Upon examination of the documents, I identified information, specifically names of individuals other than the applicant.

15. 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.

16. 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.

17. The release of the names 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

18. I have found that the identified documents are conditionally exempt under section 47F 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’.

19. 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.

20. 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).

21. 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 personnel management function of an agency.

22. 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 of the FOI Act.

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

Further Information

24. All the documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.



GC Gould
BRIG
FOI Decision Maker
Army

6 Oct 21