



Reference: OCA/OUT/2018/BJ1619905

## **FOI 027/18/19 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:

*... a study called "Logistics of Iraq" by Al Palazzo, formerly of the Land Warfare Studies Centre, now the Directorate of Army Research and Analysis, completed around 2005.*

*Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request and duplicates of documents 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 one document, totalling 156 pages, as matching the scope of this request.

### **Decision**

4. 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 33a(ii) and (iii) [public interest exemption – defence of Commonwealth and international relations], section 47F [public interest conditional exemptions – personal privacy], and section 47G(1)(a) [public interest conditional exemptions – business] 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**

5. In making my decision, I had regard to:
  - a. the terms of the request
  - b. the content of the identified document 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 Strategic Policy & Intelligence Group, Headquarters Joint Operations Command, Royal Australian Navy, Royal Australian Air Force, Army Headquarters, Special Operations Command.

### Reasons for decision

#### Exemption Claim – Section 33a(ii) and (iii) – Documents Relating to Defence of the Commonwealth and International Relations

6. **Section 33a(ii) [Defence of the Commonwealth].** Section 33(a)(ii) exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the defence of the Commonwealth. The document contains information that details the nature of capabilities that affect the security and defence of the Commonwealth. Information regarding tactical designators, stock levels and logistic capability to mount and maintain a deployment, and logistical requirements for operational activity could reasonably be expected to harm current and future operations if it is released.

7. The FOI Act does not define ‘defence of the Commonwealth’, however, previous AAT decisions indicate that the term can include protecting the Defence Force from hindrance or activities which would prejudice its effectiveness. Information contained within the document includes detail of the capabilities within the Defence portfolio and comment on tactical activity.

8. **Section 33a(iii) [International Relations].** Section 33(a)(iii) exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. The information included in the document relates to the co-operative arrangements between the Commonwealth and other international governments, or agencies on behalf of their government.

9. Co-operation was provided by foreign nations with an expectation of confidentiality. The disclosure of this information could reasonably be viewed by international partners of the Commonwealth as a breach of trust and could diminish future co-operation from those nations.

10. **Mosaic effect.** Particular consideration has been made regarding the mosaic effect of releasing commentary and information that may on its own appear to be insignificant, however, when combined with other publicly available information divulges specific capabilities, activities, and mutual agreements. If released, this information could reasonably provide an adversary with a tactical advantage thereby diminishing the capability of the ADF to defend the Commonwealth and maintain international relations.

11. Disclosure of this information could reasonably be expected to cause damage to the defence of the Commonwealth and international relations. Taking into account the above, I find that disclosure of this national information would be an unreasonable disclosure and is exempt under section 33(a)(ii) and (iii) of the FOI Act.

### **Conditional Exemption - Section 47F(1) - Personal Privacy**

12. Upon examination of the document, I identified information, specifically names of individuals other than the applicant.

13. 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.

14. I found that the:

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

15. The release of the names in the document could reasonably be expected to cause harm to the privacy of third parties. 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 is conditionally exempt under section 47F(1) of the FOI Act.

### **Conditional Exemption - Section 47G - Business Information**

16. Section 47G of the FOI Act states:

*(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*

*(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs*

17. I note the use of the word 'could' in this provision requires no more than a degree of reasonableness being applied in deciding whether disclosure would cause the consequences specified.

18. In making my decision, I had regard to the Guidelines, specifically 6.184 which notes, ‘The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself’. They further add in 6.185 that ‘*it is intended to protect the interest of third parties dealing with the government.*’

19. Information in the documents included the business involvement of third party organisations in supporting Middle East Operations. Whilst the information is old, the businesses continue to operate in the global public domain as well as in support of Defence. The disclosure of their names in conjunction with the ADF in the context of the study could be expected to create disharmony and business conflict between the organisations and their customers in regions within which they operate.

20. The objects of the FOI Act are to give the Australian community access to information held by the Government, as information held by the Government is to be managed for public purposes, and is a national resource. Defence considers the release of information from a pro-disclosure position. That is not to say that Defence releases everything, but our position, as intended by the objects of the FOI Act, is to release unless there is an exemption that can be applied to the material. Taking into account the above factors, I consider that the release of the business information would be an unreasonable disclosure and is conditionally exempt under section 47G(1)(a) of the FOI Act.

**Public interest considerations –Section 47F(1) and section 47G(1)(a)**

21. I have found that some of the identified document is conditionally exempt under section 47F(1) and section 47G(1)(a) 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’.

22. 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.

23. 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).

24. 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, business or a group of individuals.

25. Releasing the information regarding individuals and businesses including names and business support to the Australian Defence Force could cause significant harm to the individuals and business involved. 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) and section 47G(1)(a) of the FOI Act.

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

### **Further Information**

27. It should be noted that this document relates to events that occurred 15 years ago and many of the Australian defence Forces policies and practices have changed since that time.

28. The document matching the scope of this request was classified. The version of the document that is approved for release has been declassified.

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**GC Thomas**  
Colonel  
Accredited Decision Maker  
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