



Australian Government
Department of Defence

Reference: R31360597

FOI 081/17/18 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 containing information about people believed to be killed during a strike by the US, in or around the Syrian city of Raqqa on or around 11 August 2017. Those people are Khaled Sharrouf and his sons Abdullah and Zarqawi, who were Australian citizens at the time of their deaths.

Specifically, I seek access to correspondence, notes of meetings, written briefs, written advice, ministerial submissions and/or similar documents, regarding:

- 1. the strike and/or planning for the strike;*
- 2. advice received by the Department of Defence that Khaled Sharrouf may have died in the strike, and/or a copy of that advice;*
- 3. advice received by the Department of Defence that Abdullah and Zarqawi Sharrouf may have died in the strike, and/or a copy of that advice;*
- 4. Department of Defence consideration about what role Australia could legitimately play in U.S. operations against Khaled Sharrouf that contained the risk of the deaths of Australian citizens; and,*
- 5. awareness within the Department of Defence that the strike had killed or wounded Australian children, and what the consequences of those deaths may be.*

I request that you provide a schedule of material if numerous documents are captured by this request.

In the event the department does not hold any or all of the information sought, please provide a transfer of application to the relevant agency.

I advise I am not interested in duplicate copies of documents or documents that have already been publicly released or media releases, media articles or media statements.

I would also like advice if the information I seek is due to be released under the Act to individuals or organisations prior to finalisation of my application.

excluding personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers contained in documents that fall within the scope of a FOI request....”

FOI decision maker

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

Documents identified

3. 14 documents were identified as matching the description of the request.

Decision

4. I have decided to:
- a. release in full five documents relating to the general scope of the request;
 - b. refuse access to nine documents on the grounds that they are considered exempt under section 7 [exemption of certain persons and bodies] of the FOI Act;
 - c. refuse access relating to points 1 – 5 of the request under subparagraph 24A(1)(b)(ii) [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
 - d. 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 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); and
 - e. advice from Headquarters Joint Operations Command (HQJOC) Office of the Chief of Defence Force, Vice Chief of Defence Force and the Royal Australian Air Force staff in conducting searches.

Reasons for decision

Section 7 – Exemption of certain persons and bodies

6. Section 7(2A) of the FOI Act (supplemented by Schedule 2, Part II) lists agencies that are exempt from the operation of the Act in relation to particular types of documents. The exemption extends to a part of a document that contains an extract from or a summary of an intelligence agency document, or a defence intelligence document.

7. Nine documents were identified by HQJOC as potentially meeting the scope of the request. Based on advice from HQJOC I am satisfied that material contained in the nine documents pertains to intelligence originating from or to an agency exempt from the operations of the Act, as identified in section 7(2A)(a), or is associated with the collection, reporting or analysis of operational intelligence (Schedule 2, Part II). Accordingly, I have decided to refuse access under section 7(2A) of the FOI Act.

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

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

(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.*

9. No documents matching the description of points 1 – 5 of the request were identified from searches of electronic data management systems using appropriate key words. Searches were undertaken within HQJOC, Office of the Chief of Defence Force, Vice Chief of Defence Force and the Royal Australian Air Force.

10. Based on the above, I am satisfied that no documents could be located that meet the description of points 1 – 5 of the request. I am satisfied that all reasonable steps have been taken to locate the requested documents and have decided to refuse access under section 24A of the FOI Act.

Additional Information

11. Five documents were identified as matching the general scope of the request. One document of eight pages meeting the scope of the request was contained within a 67 page document. All the content of the other 59 pages in the 67 page document did not meet the scope of the request and were deemed irrelevant and have been deleted from the document that is approved for release. A document totalling 28 pages is provided in the form approved for release.

12. Some of the documents matching the scope of this request contained a dissemination limiting marker. As the documents are approved for public release the marker has been struck through.

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Nicola Viney
Accredited Decision Maker
Associate Secretary Group