



Senator the Hon Marise Payne
Minister for Defence

Parliament House
CANBERRA ACT 2600

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MIN DEF FOI 001/17/18

MINDEF FOI 001/17/18 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 held by the Defence Minister’s Office (the DMO) containing information about people believed to be killed during a strike by the U.S. in or around the Syrian city of Raqqa on or around Friday 11 August 2017 (the strike). Those people are Khaled Sharrouf and his sons Abdullah and Zargawi, who were Australian citizens at the time of their deaths.

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

- 1. the strike and/or plans for the strike;*
- 2. advice received by the Australian government that Khaled Sharrouf may have died in the strike, and/or a copy of that advice;*
- 3. advice received by the Australian government that Abdullah and Zargawi Sharrouf may have died in the strike, and/or a copy of that advice;*
- 4. Australian government 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 Australian government 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.

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.

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. Twelve documents were identified as matching the general description of the request. Ten of these documents covered information in the public domain or quoted media articles and, with the documents having already been publicly released, have not been considered in

the decision for this FOI request. The two remaining documents were identified as matching the description of the request.

Decision

4. I have decided to:
 - a. release in full one document relating to the general scope of the request;
 - b. 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;
 - c. 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 47F [public interest conditional exemptions - personal privacy]; 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 the Department of Prime Minister and Cabinet and the Department of Defence.

Reasons for decision

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

6. 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.*

7. No documents matching the description of points 1 – 5 of the request were identified from searches, using appropriate key words, of electronic data systems in the office.

8. 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.

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

9. On examination of the documents, I identified information, specifically personal information of an individual other than the applicant.

10. 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.

11. I found that the:

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

12. The information identified consists of personal information of third parties detailing private email addresses; mobile phone numbers; and family commitments of an individual. They are not relevant to the application. Taking into account the above factors, I consider that the release of the identified personal information to be an unreasonable disclosure and conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations –Section 47F(1)

13. I have found that information in one of the documents is conditionally exempt under section 47F(1) 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’.

14. 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 her own personal information.

15. 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).

16. 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.

17. Releasing personal information, such as mobile phone numbers would be a breach of privacy and adversely affect the agencies’ work environment. The release of contact information may subject the individuals to ongoing and unwanted phone calls after hours and cause significant risk to their health and wellbeing.

18. 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 sections 47F(1) of the FOI Act.

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

Additional Information

20. Both of the documents considered in this decision as 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.

21. Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. Your review rights are attached.

22. In accordance with the requirements of section 11C of the FOI Act, details of information released under the FOI Act are required to be published. The Department of Defence, on behalf of the Minister's Office will publish identified documents relating to requests within five working days of receipt by the applicant or immediately following any publication of the released material. Defence will also publish the statement of reasons with privacy deletions.



Kendra Morony
Adviser to the Minister for Defence