



DEFENCE FOI 195/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 10 September 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“The orders issued on June 9, 2010, to elements of 2Cdo regiment for the battle that became known as East Shah Wali Kot;

A map prepared as part of those orders that identified the helicopter landing zones and objectives in and near the village of Chernatu in Afghanistan.

[REDACTED]

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 have identified two (2) documents falling within the scope of the request. These are titled:

[REDACTED]

[REDACTED]

Decision

4. I have decided to:
 - a. partially release one (1) 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 sections 33(a) [Documents affecting national security, defence or international relations] of the FOI Act; and
 - b. refuse access to one (1) document in full, on the grounds that the document is considered exempt under section 33(a) [Documents affecting national security, defence or international relations] of the FOI Act.

Materials taken into account

5. In making my decision I have had regard to:
 - a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions of the FOI Act; and
 - 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 22 – Access to edited copies with exempt or irrelevant matter deleted

6. 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.
7. Paragraph 3.98 of the Guidelines provides that:

...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.
8. One (1) document is being refused in full, and I have decided that providing an edited copy of that document would be meaningless, and of little or no value once the exempt material is removed.

Section 33(a)(ii) – Documents affecting national security, defence or international relations

9. 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*
10. 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.*

11. In regard to 'defence of the Commonwealth', the Guidelines, at paragraph 5.36, refer to previous Administrative Appeals Tribunal (AAT) decisions which provide 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.
12. I have determined that the documents contain information, the exposure of which could prejudice the effectiveness of the Australian Defence Force. This is because the information pertains to force composition; and tactics, techniques and procedures (TTPs).
13. The Guidelines provide that:

5.43 When evaluating the potential harmful effects of disclosing documents that affect Australia's national security, defence or international relations, decision makers may take into account not only the contents of the document but also the intelligence technique known as the 'mosaic theory'. This theory holds that individually harmless pieces of information, when combined with other pieces, can generate a composite — a mosaic — that can damage Australia's national security, defence or international relations.
14. In making this decision I have considered the material in the documents as a whole, rather than line by line, in accordance with the mosaic theory. The release of the material could expose information that unfriendly external entities could utilise to hinder Australian defence operations and endanger Australian lives. I consider therefore that release of this information could result in damage to the defence of the Commonwealth.

15. Accordingly, I find that this material is exempt under section 33(a)(ii) of the FOI Act.



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Air Commodore
Accredited Decision Maker
Associate Secretary Group
Department of Defence