



DEFENCE FOI 312/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

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

1.) Operational summaries (OPSUM) related to TF66 operations in the vicinity of Hazaragay and Tarin Kowt. (Date range: 27 August 2012 - 11 September 2012).

2) Sametime chatlogs and other instant messaging traffic related to the events described in Item 1 (Date range: 27 August 2012 - 11 September 2012).

Background



FOI decision maker

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

Documents identified

6. I have identified 14 documents falling within the scope of the request.

7. The decision in relation to each document is detailed in the Schedule of Documents.

Decision

8. I have decided to:
- a) Partially release seven 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 material is exempt under section 33 [Documents affecting national security, defence or international relations] of the FOI Act.
 - b) Refuse access to seven documents on the grounds that the documents are considered exempt under section 33 [Documents affecting national security, defence or international relations] of the FOI Act.
 - c) Remove irrelevant material in accordance with section 22 of the FOI Act.

Materials taken into account

9. 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

10. 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.
11. Seven documents contain material that is exempt or irrelevant to the scope of the request. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents in an edited form. Whole pages considered to be exempt in full, have been removed from the released document pack.
12. I have decided to refuse access in full to seven documents. Once the exempt material is removed the documents would be meaningless, and of no value.

Section 33 – Documents affecting national security, defence or international relations of the Commonwealth

13. 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

14. 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 [former] Administrative Appeals Tribunal (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.*

15. In regard to ‘defence of the Commonwealth’, paragraph 5.36 of the Guidelines 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.

16. I have determined that the documents contain information that could cause damage to the defence of the Commonwealth. The information pertains to force composition, and tactics, techniques and procedures (TTPs), the exposure of which could prejudice the effectiveness of the Australian Defence Force (ADF).

17. Paragraph 5.43 of the Guidelines provide:

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...

18. I have considered the material in each of the documents as a whole, rather than line by line, in accordance with the mosaic theory. Releasing the material could expose information that unfriendly external entities may use to hinder Australian defence operations, and endanger Australian lives. When combined with information already in the public domain, release of the material could prejudice the effectiveness of ADF operations. I consider that releasing the information could damage the defence of the Commonwealth.
19. Accordingly, I am satisfied that the documents are exempt under section 33 of the FOI Act.

FURTHER INFORMATION

20. The documents matching the scope of this request contained a dissemination limiting marker (DLM). In the instance where documents have been approved for public release the DLM is struck through.



Accredited Decision Maker
Associate Secretary Group
Department of Defence