



**DEFENCE FOI 302/24/25**

**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):

*...I seek all operational summaries for OP Tevara Sin VII, conducted in Afghanistan from June 9 to June 15, 2010.*

*I do not seek names, addresses or phone numbers, with the following exceptions:*

- *The names of these reports' authors.*

**Background**

2. On 17 October 2024, the applicant submitted a request under the FOI Act to Defence in the following terms:

*...I request a copy of any operational summaries created about the June, 2010, Battle of Shah Wali Kot in Afghanistan.*

3. On 18 October 2024, Defence informally sought clarification on the scope of the request.
4. On 25 October 2024, the applicant revised the scope of the request in the form shown in paragraph (1) above.

**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 seven (7) documents falling within the scope of the request.

**Decision**

7. I have decided to:
  - a. partially release seven (7) 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 deleted material is considered exempt under section 33(a) [Documents affecting national security, defence or international relations], and section 47F [Public interest conditional exemptions – personal privacy] of the FOI Act; and
  - b. remove irrelevant material in accordance with section 22 of the FOI Act.

### **Materials taken into account**

8. 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**

9. 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.
10. The documents identified in the schedule of documents as being released in part contain exempt and irrelevant material such as telephone numbers that do not relate to the request.
11. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents to you in an edited form.

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

12. 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

13. 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.*

14. 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.
15. 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).
16. The Guidelines provide at 5.43 that:
 

*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...*
17. In making this decision I have considered the material in each of 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.

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

**Section 47F – public interest conditional exemptions – personal privacy**

19. Section 47F(1) of the FOI Act states:

*A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

20. The FOI Act shares the same definition of ‘personal information’ as the *Privacy Act 1988* (Cth). The Guidelines provide that:

*6.123 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:*

*(a) whether the information or opinion is true or not; and*

*(b) whether the information or opinion is recorded in a material form or not.*

21. I found that that one (1) document contains personal information about an individual that is not well known and is not publicly available, being the name of a junior departmental personnel member.
22. In my assessment of whether the disclosure of this personal information is unreasonable, I considered the following factors in accordance with section 47F(2):
- 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; and
  - d. the effect the release of the personal information could reasonably have on the third party.
23. I found that the personal information redacted in the documents are not widely known to be associated with the matters dealt with in the documents and the information is not readily available from publicly accessible sources.
24. The release of the name of the individual identified in the document could reasonably be expected to cause harm to their privacy. Taking into account the above factors, I consider that the release of the personal information of an individual that is not the

applicant would be an unreasonable disclosure of personal information and conditionally exempt under section 47F of the FOI Act.

**Public interest considerations – section 47F**

25. Section 11A(5) of the FOI Act states:

*The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.*

26. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

*(a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*

*(b) inform debate on a matter of public importance;*

27. In my view, disclosure of this information would not increase public participation in Government processes (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). In addition, the material does not relate to the personal information of the applicant.

28. Paragraph 6.233 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:

- the protection of an individual's right to privacy; and
- the interests of an individual or a group of individuals.

29. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel, and for third parties. Further, Defence has an obligation to protect the personal information of staff members and third parties. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of Defence personnel and third parties should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.

30. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.

31. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under sections 47F of the FOI Act.

**FURTHER INFORMATION**

32. While I note the applicant specifically asked for the names of the report authors. These Operational Summaries were compiled in accordance with applicable procedures at the time of creation in 2010. No author names were listed on six (6) documents. One (1) document does contain author details, however these have been redacted in accordance with section 47F [Public interest conditional exemptions – personal privacy] of the FOI Act.
33. The documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

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Accredited Decision Maker  
Associate Secretary Group  
Department of Defence