



DEFENCE FOI 480/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by Simon Harris (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):

In relation to JTF 633.

1. *The initial document which established the JTF633 (there should only a few documents)*
2. *Each document which assigned or authorised the CJTF633 and DCJTF633 (say, two documents per year, so ~40 documents)*
3. *An org chart for each of the above changes (so another ~20 documents)*

In relation to assignment of SOTG/TF66:

4. *The documents which assigned a commander to SOTG/TF66 (there should only be one or two per year, so maximum 40)*
5. *The documents which assigned or gave control of SOTG/TF66 to anyone outside of Australian chain of command, e.g. to ISAFSOF (estimated between 10-30 documents).*

Save for item 3, the request relates only to the formal instruments or documents, in other words, they are likely to be letters or in a similar format and signed, and would not be in an informal email format (although they may be attachments to emails). Given the effect and importance of these documents they should be well managed in a centralised location and easy to obtain (i.e. intensive and broad searches should not be required).

Background

2. On 26 November 2023, the applicant submitted a request under the FOI Act to Defence in the following terms:
 1. *documents authorising or establishing JTF 633 and any updates or amendments.*
 2. *documents assigning any command or control of SOTG/Task Force 66 to any non-ADF chain of command.*
3. On 12 December 2023, with the applicant's written agreement Defence extended the period for dealing with the request until 12 January 2024 in accordance with section 15AA [extension of time with agreement] of the FOI Act.

4. On 4 January 2024, Defence wrote to the applicant seeking clarification regarding the scope of their request and their agreement to a further extension of the statutory timeframe in accordance with section 15AA [extension of time with agreement] of the FOI Act. On the same day, the applicant refused Defences request for further time to process their request however provided the following clarification in relation to the scope:

To clarify by timeframe, the timeframe is from 2006 to 2014

To clarify by "points of contact", by way of example and not to limit any other "points of contact", for instance a point of contact may be ISAF SOF or COM ISAF SOF.

5. On 12 January 2024, Defence formally consulted with the applicant in accordance with section 24AB of the FOI Act. On 15 January 2024, the applicant provided a response however did not revise the scope of their request. On 19 January 2024, Defence wrote to the applicant providing further information regarding the magnitude of their request. On 1 February 2024, the applicant revised the scope of their request to the terms outlined in paragraph 1.
6. On 9 February 2024, the OAIC issued a direction to make a revised decision under section 55G [Procedure in IC review – revocation or variation of access refusal decision] of the FOI Act by 29 March 2024.

Scope of external review

7. In view of the OAICs correspondence of 9 February 2024, 36 documents matching the scope of the applicant's request have become the subject of an external review process.
8. The purpose of this correspondence is to provide the applicant with a revised decision under section 55G the FOI Act.

FOI decision maker

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

Documents identified

10. I have identified 36 documents as falling within the scope of the request.

Exclusions

11. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Revised Decision under section 55G of the FOI Act

12. I have decided to:

- a. partially release 36 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 [Documents affecting national security, defence or international relations] of the FOI Act;
- b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

13. 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;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. advice received from subject matter experts within Defence.

REASONS FOR DECISION

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

14. 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.
15. The documents contain exempt material and information that does not relate to the request.
16. 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) – Documents affecting national security, defence or international relations

17. Section 33(a) 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:

(i) the security of the Commonwealth

...

(ii) the international relations of the Commonwealth

18. 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.

...

Security of the Commonwealth: [Damages]

5.31 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.*

International Relations: [Damages]

5.37 ... The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.

19. Additionally, the Guidelines provide:

Security of the Commonwealth

5.29 The term 'security of the Commonwealth' broadly refers to:

- (a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests*
- (b) the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations (see definition in s 4(5)).*

International relations

5.36 The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

20. I identified material in the documents which, upon release, could reasonably be expected to cause damage to the security of the Commonwealth by making public a Defence capability that is classified. The exempt material contains sensitive information about a capability that could potentially allow bad actors with hostile intentions to exploit the Australian Defence Force.
21. Further, I find that disclosure of the documents exempted under section 33(a)(iii) of the FOI Act would cause, or could reasonably be expected to cause, damage to the international relations of the Commonwealth. The documents identify potential coalition partnerships and how these relationships are managed.
22. In applying section 33 exemptions, I have also taken into account the intelligence technique known as the “mosaic theory”, whereby information in a document may not, itself, cause harm but in combination with other known information, it may contribute to a complete picture which results in harm (the ‘mosaic theory’).
23. The Guidelines provide further, at paragraph 5.39:

The mosaic theory

5.39 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. Therefore, decision makers may need to consider other sources of information when considering this exemption.

24. Accordingly, I assert further that the release of the identified material, when combined with information already in the public domain, could allow adversaries to undermine Defence’s capability and effectiveness.
25. Accordingly, I am satisfied the information is exempt under section 33(a)(i) of the FOI Act.

Section 47F – Personal Privacy

26. 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).

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

6.128 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.*

28. I found that the information contains personal information of a number of individuals. The documents include names and email addresses which if disclosure, could reasonably be expected to identify the third parties.
29. In my assessment of whether the disclosure of 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.
30. I found that the personal information relating to the third parties is not readily available from publicly accessible sources and could reasonably identify or cause harm to the individuals.
31. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - section 47F

32. 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.*
33. 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;*
 - (c) *promote effective oversight of public expenditure.*
34. In my view, 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).
35. 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:
- the protection of an individual's right to privacy;

- the interests of an individual or a group of individuals; and
 - the personnel management function of an agency.
36. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of material contained in the documents. In my view, it would be contrary to the public interest to disclose personal information of third parties and cause unnecessary distress to them.
37. 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.
38. 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 section 47F of the FOI Act.

FURTHER INFORMATION

39. A number of the documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.
40. Some of 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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Christopher Austin, ADC
Colonel
Accredited Decision Maker
Headquarters Joint Operation Command
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