



Reference: FOI 518/23/24

**STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982 – REVISED DECISION - SECTION 55G**

1. I refer to the request by James Smith (the applicant), dated 4 December 2023 to the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

- 1. Creating, authorising or establishing Joint Task Force 633 (JTF 633) and any amendments or updates to those documents.*
- 2. Assigning or transferring any type of command or control of SOTG/TF66 to any non-ADF chain of command.*
- 3. Such as organisational charts, which show the command and control arrangements for SOTG/TF66 between 2008 and 2014.*
- 4. Such as organisational charts, which show the name, rank and where relevant, nationality, of:*
  - (a) Commander ISAF SOF (including nationality)*
  - (b) Commander of SOTG/TF66 (including nationality)*
  - (c) Deputy Commander of JTF633 (nationality not required)*
  - (d) Commander of JTF633 (nationality not required) upon each new appointment to those positions between 2008 and 2014.”1. The initial document establishing JTF633 (1 document)*

**Background**

2. On 15 December 2023, Defence sought the applicant’s agreement to an extension of time in accordance with section 15AA [extension of time with agreement] of the FOI Act.
3. On 18 December 2023, the applicant declined to grant the extension of time.
4. On 4 January 2024, the decision became a deemed refusal decision.
5. On 15 January 2024, the applicant contacted the Office of the Australian Information Commissioner (OAIC) in relation to the deemed decision.
6. On 16 January 2024, the OAIC issued Defence with a Preliminary Inquiries notice under section 54V of the FOI Act.
7. On 5 February 2024, the OAIC issued Defence with a direction under section 55T of the FOI Act to make a revised decision under section 55G [revocation or variation of access refusal decision] of the FOI Act.

8. On 26 February 2024, Defence provided the applicant with a courtesy consultation notifying them, that without revision, their request was likely to result in a decision to refuse their request under section 24AA of the FOI Act. The applicant was advised that this would have the effect of the applicant's request being practically refused on the grounds that the work involved in processing the applicant's request would substantially and unreasonably divert the resources of the agency. The notice invited the applicant to revise the scope of their request.

9. On 27 February 2024, the applicant revised the scope of the request to the following:

*Please provide*

*The initial document establishing JTF633 (1 document)*

*An organisation chart applicable at 1 January and 1 July for each year including and between 2009 and 2015. (Say 14 documents)*

*The appointment document for CJTF633 for each of those years. (Approx 7 documents)*

*The document where SOTG was assigned to ISAF (as TF66) (a few documents).*

10. On 13 March 2024, Defence accepted the revised scope and this forms the subject of this section 55G decision.

### **Scope of external review**

11. The purpose of this correspondence is to provide the applicant with a revised decision under section 55G [procedure in IC review – revocation or variation of access refusal decision] of the FOI Act.

### **FOI decision maker**

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

### **Documents identified**

13. I have identified 14 documents as falling within the scope of the request. The decision in relation to each document is attached in the Schedule of Documents.

### **Decision**

14. I have decide to:

- a. partially release 14 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 sections 33(a)(i) and 33(a)(ii) [documents affecting national security, defence or international relations – the security and Defence of the Commonwealth] and 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.

## Material taken into account

15. In making my decision, I have had regard to:
- a. the terms of the revised FOI 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);
  - e. advice from Defence Legal with Defence; and
  - f. advice from Army Headquarters.

## REASONS FOR DECISION

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

16. Section 22 of the FOI Act states:

*This section applies if:*

*(a) An agency decides:*

*(i) To refuse to give access to an exempt document:*

*(ii) That to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*

*(b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:*

*(i) Access to the edited copy would be required to be given under section 11A;*

*(ii) The edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request*

17. Having reviewed the documents, I have identified that the requested information is not contained in one single document; rather in several different documents. Many of these documents cover a number of topics that are irrelevant to this specific request.

18. Therefore, I have decided to provide these documents with irrelevant matter deleted.

19. 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.

20. Where whole pages are considered to be exempt in full or irrelevant to the scope of the request, these pages have been removed from the released document pack.

21. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents in an edited form.

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

22. Section 33(a)(i) 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 defence of the Commonwealth;*

23. 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.*

24. In regard to ‘security of the Commonwealth’, the Guidelines provide at paragraph 5.30:

*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)).*

25. The documents contain information pertaining to Defence capabilities regarding national security.

26. The documents also contain information that relate to personnel and capabilities which, when combined with information that is already publicly available, could allow potential adversaries to determine the resources available to the Australian Defence Force (ADF) to undertake specific operations in specified contexts. Consequently, disclosure of this information would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

27. 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.

28. In determining the extent to which the section 33(a)(ii) exemption applies, paragraph 5.43 of the Guidelines stipulates:

*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.*

29. In understanding the application of the mosaic theory it is fundamental that it is not just strategic documents that are covered by the operation of section 33(a)(ii) of the FOI Act, but rather, key pieces of information that can be used in conjunction with the already wide range of information available to compile a complete picture. In the case of *Milliss and National Archives of Australia* [2000] AATA 565, the Tribunal provided, at paragraphs 21-22:

*...in seeking to obtain access to material, a searcher may seek or be enabled to with the smallest particle of intelligence, even though such particle may be innocuous standing alone, when used in conjunction with other pieces of intelligence build up a picture, the likes of which the searcher was seeking to construct.*

*Thus information on its face or in conjunction with other material might, depending on the evidence, enable a person to ascertain by process of inference, induction or deduction, the identity of a source in question...*

30. Importantly, when considering the release of sensitive information relating to ADF capabilities, it is essential to consider that documents released in response to an FOI request cannot be conditionally released or restrictions placed on the future use of the documents.

Noting that the applicant is using Right to Know to submit their FOI request and receive responses, it is reasonable to consider that the release of the documents constitutes release to the world at large. It is also essential to take into account both the environment in which Defence undertakes its essential functions and the environment into which the material will be released.

31. Taking into account that the relevant material contains references to operational capabilities of the ADF, the material is likely contain information that could be pieced together by someone looking to prejudice the defence of the Commonwealth. In these circumstances, it is my view that release of this material may enable it to be used in conjunction with information available from other sources in ways that would prejudice the effectiveness of the ADF to undertake its core function of defending the Commonwealth and its interests. In turn, impacting the national security of the Commonwealth.

32. Accordingly, I am satisfied the document is exempt under section 33(a)(i) and (ii) of the FOI Act.

### **Section 47F – Public interest conditional exemptions - personal privacy**

33. 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).*

34. 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.*

35. I found that the documents contain personal information of individuals other than the applicant. This includes their signatures, email and contact details, which would reasonably identify them as third parties.

36. 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.

37. I found that the specific personal information contained in the documents is not well known, individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the document, and the information is not readily available from publicly accessible sources.

38. Accordingly, I am satisfied that the material is conditionally exempt under section 47F of the FOI Act.

#### **Public interest considerations – section 47F**

39. 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.*

40. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors in favour of providing access to the documents are:

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

41. I am satisfied that disclosure of the documents would not increase public participation in government processes, nor would it increase scrutiny or discussion of government activities. I also am of the view that disclosure would not inform debate on a matter of public importance.

42. Paragraph 6.231 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
- Defence's ability to attract future employees or retain existing employees if they believe their personal information could be released under the FOI Act.

43. 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.

44. I am satisfied, based on the above, the public interest factors against disclosure outweigh the factors in favour of disclosure, and that, on balance, it is against the public interest to release the information. Accordingly, I find that the information is exempt under section 47F of the FOI Act.

## **Further Information**

45. Some of the documents matching the scope of this request contain a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been removed under section 22 of the FOI Act.

Belinda Hayward  
Special Advisor – Freedom of Information Review  
Freedom of Information Directorate