



**DEFENCE FOI 310/20/21 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act) for access to:

- a. *copies of permits for the export of military equipment from Australia to Myanmar for the period 1 January 2017 to 31 December 2018; and*
- b. *documents relating to Australian Defence cooperation with, or support for, the Myanmar military between 2018-2020. In particular I am seeking documents which relate to:*
  - i. *training;*
  - ii. *provision of equipment;*
  - iii. *provision of other material support; and*
  - iv. *intelligence sharing.*

**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.

3. Personal email addresses, signatures, PMKeyS numbers and 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.

**Documents identified**

4. I identified 61 documents as matching the description of the request.
5. The decision in relation to each document is detailed in a schedule of documents.
6. I have added an FOI reference number and document number to each of the documents, which corresponds with the schedule.

**Decision**

7. I have decided to:
  - a. release 10 documents in full;
  - b. partially release 51 documents in accordance with section 22 [Access to edited copies with exempt or irrelevant matter deleted] on the grounds that the deleted material is considered exempt under section 33 [Documents affecting national security, defence or international relations] and section 47F [public interest conditional exemptions - Personal Privacy] of the FOI Act;

- c. refuse access to documents of the request under subparagraph 24A [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and
- d. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

### **Material taken into account**

8. In making my decision, I had regard to:

- a. the terms of the request;
- b. the content of the identified documents in issue;
- c. relevant provisions in 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. the Information Commissioner's Position Paper on the disclosure of public servants' personal information; and
- f. advice provided by International Policy Division, Defence Industry Policy Division and the Department of Foreign Affairs and Trade.

### **Reasons for decision**

#### **Section 24A (1) of the FOI Act**

9. Section 24A(1) of the FOI Act states:

*24A Requests may be refused if documents cannot be found, do not exist or have not been received*

*Document lost or non-existent*

*(1) An agency or Minister may refuse a request for access to a document if:*

*(a) all reasonable steps have been taken to find the document; and*

*(b) the agency or Minister is satisfied that the document:*

*(i) is in the agency's or Minister's possession but cannot be found; or*

*(ii) does not exist.*

10. No documents matching the description of "*copies of permits for the export of military equipment from Australia to Myanmar for the period 1 January 2017 to 31 December 2018*" were identified from searches of electronic data management systems and hard copy records conducted by staff of the Defence Export Controls Branch of Defence Industry Policy Division.

11. Based on the above, I am satisfied that no documents could be found matching the scope of this request. I am satisfied that all reasonable steps have been taken to locate the requested documents and have decided to refuse access under section 24A of the FOI Act.

#### **Section 33 – Documents affecting national security, defence or international relations**

12. Section 33 of the FOI Act exempts documents that would, or could reasonably be expected to, cause damage to the security, defence or international relations of the Commonwealth.

13. I have identified information within the documents that, if released, could jeopardise Australia's security and our relationship with Myanmar.

14. Some of this information relates to the capabilities of the respective defence forces and to training requirements and priorities. I am of the view that the disclosure of this information could reasonably be expected to cause damage to the security or the defence of the Commonwealth by providing adversaries with a military advantage.

15. The release of some information found in these documents would damage Australia's ability to maintain a good working relationship with Myanmar, other governments and international organisations. The disclosure of the information may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or agencies less willing to cooperate with Australian agencies in the future.

16. In evaluating the potential harmful effects of disclosing information in the documents referred to at paragraph 7(a) and 7(b), I have taken into account 'mosaic theory', which refers to individual pieces of information which may not be harmful in isolation, but which may cause damage to Australia's national security when combined with other pieces of information.

17. I have therefore determined that this material is exempt under section 33 of the FOI Act.

#### **Section 47F – Personal privacy**

18. Examining the documents, I identified information, specifically names and contact details of individuals other than the applicant. Some of these names are of Australian Government officials and some are Myanmar government or military officials. A public servant's name, and information about where they work and how they can be contacted, is personal information (see section 6 of the *Privacy Act 1988*).

19. Subsection 47F(1) of the FOI Act states that "...[a] document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person...".

20. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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.

21. I found that the:

- a. specific personal information listed is not well known;
- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents; and
- c. information is not readily available from publicly accessible sources; and
- d. there could be considerable detrimental effect on the persons whose information would be released.

22. In accordance with subsection 47F of the FOI Act and paragraphs 6.138-6.148 of the Guidelines, I have found that this personal information is conditionally exempt because its disclosure would be unreasonable. My public interest arguments are detailed below.

### **Public Interest Conditional Exemption Considerations – section 47F**

23. Section 11A(5) of the FOI Act states that access must be given to a document even “...*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...*”.

24. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines, together with a range of factors that favour access to a document set out in section 11B(3) [Public interest exemptions – factors favouring access] of the FOI Act.

25. I consider that disclosure may promote some of the objects of the FOI Act, as information held by Government is a national resource.

26. I also note that the Information Commissioner remains of the view that generally it is not unreasonable to disclose the names and contact details of public servants because this information only reveals that they were performing their public duties and that there are public interest factors, including transparency and accountability of public servants, which favour disclosure of this kind of information.

27. However, due to the volatility of the situation in Myanmar, I also considered the potential risks of disclosure of these details. Section 19 of the *Work Health and Safety Act 2011* requires employers to ensure, as far as is reasonably practicable, the health and safety of their workers. This means employers must eliminate risks to health and safety so far as it is reasonably practicable to do, or minimise the risks if it is not reasonably practicable to eliminate them (s17). Therefore, as an employer, the Australian Government has a statutory obligation to do what it can to eliminate or minimise known risks to the health and safety of its staff.

28. Myanmar has a history of human rights abuses, and Australia’s Defence relationship with them is constantly scrutinised. There are a number of known domestic and online malign groups which have voiced their opposition to Australia and Defence’s stance. I consider that disclosure of public servant’s names and contact details may increase the risk of stalking, harassment and intimidation – including outside the workplace, and online abuse, insults and trolling. In a worst case scenario, their details could be used to identify them on social media which could in turn then place family and friends at risk.

29. In the case of Myanmar officials, I consider there to be a very real threat to their life or safety if their names were to be revealed given the current domestic circumstances.

30. Further, paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. I found the factor relating to release of information being prejudicial to the protection of an individual’s right to privacy particularly relevant in considering disclosure of the identified material.

31. In weighing the public interest, I also considered any detriment that disclosure may cause to the person to whom the information relates and the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

32. None of the factors listed in section 11B(4) of the FOI Act (Irrelevant Factors) were taken into account when making my decisions under the Public Interest conditional exemptions.

33. On balance, I have found that it would be contrary to the public interest to release the information considered conditionally exempt under sections 47F of the FOI Act.

**Third party consultation**

34. In normal circumstances, I would consult with third parties regarding their information which is contained in the released documents. The current state of emergency in Myanmar & the unlawful detention of figures in the civilian government and civil society by the military mean that consultation is not possible at this time. For this reason, I have been very cognisant of the potential political and military implications for both Australia and Myanmar in my considerations of what I can release to you. I ask that you be similarly mindful in how you use the information.

**Further Information**

35. The latest information on Australia's relationship with Myanmar appears on the DFAT website at:

<http://dfat.gov.au/geo/myanmar/Pages/myanmar-country-brief.aspx>

36. Some of the documents matching the scope of this request contained a dissemination limiting marker. As the documents are now approved for public release, the marker has been struck through.

Rachelle  
Bonner

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**Dr Rachelle Bonner**

Accredited Decision Maker

Strategy, Policy & Industry Group