



HEADQUARTERS
UNITED STATES FORCES, JAPAN
APO AREA PACIFIC 96328-5068

27 July 2017

TO: Japanese Representative, Joint Committee

1. Reference: The Minutes of the Joint Committee, including the Subcommittees thereof, established under Article XXVI of the Administrative Agreement of February 28, 1952.

2. At the first meeting of the Joint Committee established by Article XXV of the Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan (SOFA) (hereinafter, the Joint Committee), the USG and Government of Japan (GOJ) concurred in the adoption of an arrangement that the official minutes of the Joint Committee meetings were to be considered as official documents pertaining to both Governments and that they "will not be released without mutual agreement." Given this latter statement by the Joint Committee, it is clear that the referenced documents are now subsumed into the minutes of the Joint Committee and protected from release by the aforementioned Joint Committee agreement. That release of Joint Committee minutes (which term includes all of the documents of the Joint Committee and its subordinate subcommittees) requires the mutual consent of the two governments.

a. Both Governments concurred in the adoption of these arrangements in order to further frank and open discussions in the Joint Committee and its various organs. Without frank and open discussions, it would be impossible for the two governments to discuss difficult issues and reach solutions that may, sometimes, involve a compromise between two co-equal sovereigns, and, at other times, may involve a government reaching an agreement that, while achieving its best interests, would not be publicly popular, if revealed.

b. Release of the communications would establish a precedent that would ensure the release of all emails, minutes, notes, decisions, procedures, interpretations, Agreed Views, arrangements, and all other exchanges of views or agreements now protected under the agreement of both Governments. Clearly, such a result would be harmful to the relationship of trust between the United States and Japan.

c. Furthermore, release of the referenced agreements by the GOJ without the mutual agreement of the USG would likely, under the U.S. Freedom of Information Act, result in the USG losing the ability to refuse the release of similar information, even if the GOJ were to request the USG to withhold release as contemplated under the provisions of the agreement reached at the First Joint Committee.

d. Finally, continued protection of the documents would be consistent with the past practice of both Governments with respect to requests for release to the public of information similar to that in the referenced documents.

3. Similar to the protection of the final agreements and understandings between the two Governments, the discussions leading to those agreements and understandings are not and never were intended by either side for public release. In such a case the rationale for withholding release is even stronger as the communications do not represent decisions of either Government and may often be misleading in attempting to interpret the final result. The stable stationing of U.S. Forces in Japan relies heavily on frank and open discussions between U.S. Forces, Japan (USFJ) and relevant GOJ ministries and agencies. Based on mutual trust, most of these discussions are delivered on the premise that they will always be treated as strictly confidential. In order to preserve such discussions, the U.S. believes that disclosure of internal (in this instance, email) communications between USFJ and MOFA would lead to chilling effect on the future internal coordination between USFJ and relevant GOJ agencies, and as a consequence, jeopardize the stable stationing of U.S. Forces in Japan. Therefore, the U.S. strongly opposes to presenting any internal communication between USFJ and MOFA as evidence in the Japanese court. Along this line, the U.S. dissents from the submission of the emails in concern, not partially but entirely, to the court.



CHARLES G. CHIAROTTI
Major General, U.S. Marine Corps
United States Representative, Joint Committee