



Australian Government
Department of Defence

Freedom of Information
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2610
Tel: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

Our reference: FOI 003/15/16

By email: [REDACTED]

Dear [REDACTED]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

I refer to your request of 7 July 2015 in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

1. *Cocos Island Surveillance System - Concepts and Capability - 2013/2014, Strategic Management - Research*, and
2. *Cocos Island Surveillance System - Trials and Reports - 2013/2014, Strategic Management - Research - Projects*.

Revised scope

By email of 13 July 2015, you agreed to the following revised scope:

"access under the Freedom of information Act 1982 (FOI Act), to documents from Defence Science and Technology Organisation to the Department of Border Force Control (formerly Department of Immigration and Border Protection) in relation to the Cocos Island Surveillance System Trials, created during the period 1 June 2013 to 31 December 2014."

Background

On 15 July 2015, our office advised you of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. You provided the receipt for your payment of the required deposit on 12 August 2015. As such, the statutory deadline for processing your request was 7 September 2015.

On 28 August 2015, our office informed you that the decision maker had determined that there was a requirement to consult with third parties under section 27 [Consultation – documents affecting business] of the FOI Act, before finalising the decision. As such, in accordance with section 15(6) [extension of processing period to comply with requirement of section 27] of the FOI Act, the statutory timeframe was amended to 7 October 2015.

The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

Dr R Sandeman, Director Ministerial Liaison, Defence Science and Technology Group, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

Dr Sandeman identified 52 documents that match the description of your request. The decision in relation to each document detailed in a schedule of documents, which will be provided when the documents are released (refer to below for further information).

When documents are released, you will note the decision maker has added an FOI Item number to each of the documents, which corresponds with the schedule.

Decision

Dr Sandeman decided to release the identified documents with deletions made 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 either irrelevant, or exempt under section 33 [documents affecting national security, defence or international relations], and/or section 47F [documents containing personal information] and/or section 47G [Public interest conditional exemptions – business] of the FOI Act.

Material taken into account

In making her decision, Dr Sandeman had regard to:

- a. the content of the documents in issue;
- b. relevant provisions in the FOI Act;
- c. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
- d. responses to internal Defence consultation; and
- e. responses to third party consultation.

Reasons**Section 22 - Irrelevant**

Dr Sandeman found that certain documents contained material regarding matters which did not relate to the scope of your request.

Therefore, Dr Sandeman considered that the material, if released, would disclose information that would be reasonably regarded as irrelevant to the scope of the request. Consequently, in accordance with subparagraph 22(1)(a)(ii) of the FOI Act, she decided to remove the material.

Section 33 - Security and Defence

Section 33 [Documents affecting national security, defence or international relations] of the FOI Act states:

- 33 Documents affecting national security, defence or international relations*
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;*

Section 33 of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to cause damage to the security or defence of the Commonwealth. In regards to the terms, 'could reasonably be expected to' and 'damage', the Guidelines specify:

5.13 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.

5.14 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.

5.25 'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage was likely to result from disclosure of the document(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments.[11] A dispute between individuals may have sufficient ramifications to affect relations between governments. It is not a necessary consequence in all cases but a matter of degree to be determined on the facts of each particular case.

In relation to the 'security of the Commonwealth', the Guidelines provide:

5.26 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)).*

5.27 A decision maker must be satisfied that damage to the security of the Commonwealth would be caused by disclosure of the information under consideration....

The Guidelines provide that "*The Act does not define 'defence of the Commonwealth'. Previous AAT decisions indicate that the term includes:*

- *Meeting Australia's international obligations*
- *Ensuring proper conduct of international defence relations*
- *Deterring and preventing foreign incursions into Australian territory*
- *Protecting the Defence Force from hindrance or activities which would prejudice its effectiveness."*

Upon examination of the documents, Dr Sandeman found they contained information regarding Commonwealth assets and capability that, if released, could allow those hostile to the Commonwealth's interests to take appropriate counter measures and/or hinder Commonwealth operations. Hindrance of these activities could prejudice Commonwealth agencies in their effectiveness to undertake required operations and to be ready for future

tasks as part of the Government's overall national security strategy. Hence, Dr Sandeman found that disclosure of this information would cause, or could reasonably be expected to cause damage to the security and the defence of the Commonwealth. For this reason, Dr Sandeman found the material to be exempt under subsections 33(a)(i) and 33(a)(ii) of the FOI Act.

Section 47F - Personal privacy

Upon examination of the documents, Dr Sandeman identified information, specifically names and signatures, belonging to individuals other than you that satisfy the definition of personal information in section 4 of the FOI Act.

In addition, in consultation with the Department of Border Force Control (previously the Department of Immigration and Border Control), the Department specifically requested that names and details of the Department's staff members below SES level also be considered exempt under section 47F of the FOI Act, as this information is not well known, is not publicly accessible and release of these names and personal details would result in an unreasonable disclosure of staff members' personal information.

In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, Dr Sandeman had regard to:

- (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 documents; and
- (c) the availability of the information from publicly accessible sources.

Against those criteria, Dr Sandeman found that:

- (a) the specific personal information is not well known to the general community;
- (b) the person to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the documents; and
- (c) the specific information is not readily available from publicly accessible sources.

Noting the findings against the above criteria, Dr Sandeman decided that the disclosure of this information would constitute an unreasonable disclosure of personal information belonging to a person other than you. Accordingly, Dr Sandeman considered this material to be conditionally exempt under section 47F of the FOI Act.

Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

Section 47G - Business

Dr Sandeman also found that some documents contained information concerning the business affairs of third parties. Dr Sandeman considered that the disclosure of this information may unreasonably adversely affect the third party in respect of its business, commercial and/or financial affairs by allowing a competitor or another person access to confidential information to the third parties business. Further, Dr Sandeman considered that whilst the contractor may be prepared to provide this information to the Commonwealth, it may not wish this information to be made publically available. As such, the inappropriate release of business

affairs by the Commonwealth could have an adverse effect on the future ability of negotiations between both parties, and therefore, prejudice supply to the department. Therefore, Dr Sandeman considered the information, if released, would adversely affect the contractor in respect of their lawful business and commercial affairs, and is therefore considered conditionally exempt under section 47G of the FOI Act.

Public interest considerations – Section 47F and 47G

In assessing whether the disclosure of the information considered exempt under section 47F is contrary to the public interest, Dr Sandeman considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors].

Subsection 11B(3) states “*factors favouring access to the document in the public interest include whether access to the document would do any of the following:*

- (a) *promote the objects of this Act*
- (b) *inform debate on a matter of public importance*
- (c) *promote the effective oversight of public expenditure; and*
- (d) *allow a person to access his or her own personal information.*”

Dr Sandeman noted that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, she considered disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

Based on the above, under section 47F, Dr Sandeman considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the identified personal information. Therefore, she decided that it would be contrary to the public interest to release information considered exempt under section 47F of the FOI Act.

Dr Sandeman considered the position of the third party under section 47G, and formed the view that disclosure of their business information would directly impact on the profitability of the contractor, and further, it would also affect their ability to maintain competitive advantage over their competitors. Dr Sandeman also considered that the public interest that Defence does not disclose sensitive proprietary information of other companies or organisations, as this may not only adversely affect their lawful business and commercial affairs, but also affect their dealings and prejudice supply to the department.

Accordingly, Dr Sandeman considered that, on balance, the public interest factors against disclosure, outweighed the factors for disclosure of the material. Therefore, Dr Sandeman decided that it would be contrary to the public interest to release information considered to be exempt, under section 47G of the FOI Act.

In coming to the above decision, Dr Sandeman also considered subsection 11B(4) [Public interest exemptions – irrelevant factors] of the FOI Act, which lists factors which must be taken into account in deciding whether access would, on balance, be contrary to the public interest. Dr Sandeman advised that none of the factors she took into account were listed under subsection 11B(4) of the FOI Act.

Payment of Charges

In order to finalise your request, you are required to pay the remaining [REDACTED]. Please find attached at Enclosure 1, a Payment Authorisation Form for the balance, for you to complete and return.

FOI Disclosure Log

In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

Your Review Rights***Internal Review***

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. You must request a review, in writing, within 30 days of the date of this letter, or the date you receive the documents. Requests can be sent to:

Email: FOIReview@defence.gov.au
Fax: 02 626 62112
Post: Freedom of Information Directorate - Reviews
Department of Defence
CP1-6-029
PO Box 7910
CANBERRA BC ACT 2610

Australian Information Commissioner

Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992
Fax: 02 9284 9666
Post: GPO Box 2999
Canberra ACT 2601

Complaints

You may complain to Defence, the Information Commissioner or the Commonwealth Ombudsman about an action taken by Defence in the exercise of its power or the performance of its functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Department of Defence, your complaint can be addressed to Mr Tony Corcoran using the contact details below:

Email: tony.corcoran@defence.gov.au
Post: Tony Corcoran
Assistant Secretary Information Management and Access Branch
CP1-6-14
PO Box 7911
CANBERRA BC ACT 2610

Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)
Fax: 02 6276 0123
Post: Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Contact details for the Information Commissioner are above.

Should you have any questions in regard to this matter please contact this office.

Yours sincerely



John Peterson
Case Officer
Freedom of Information

6 October 2015

Enclosures:

1. Freedom of Information Payment Authorisation Form



Australian Government
Department of Defence

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 PO Box 7910
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**FREEDOM OF INFORMATION REQUEST – BALANCE OF CHARGES
 AUTHORISATION**

FULL NAME or ORGANISATION Service or PMKEYS ID (if applicable)			
POSTAL ADDRESS:			
CONTACT PHONE NUMBERS:	H	M	B
EMAIL:			
FOI REFERENCE :			
AMOUNT \$	[REDACTED]		

By signing this form you are agreeing to pay the charges notified to you by the Freedom of Information Directorate.

PLEASE DO NOT SEND CHEQUES OR MONEY ORDERS TO FOI

Once our office receives this form, the Department of Defence will generate an invoice in order for you to make payment of the agreed charges via one of the payment options made available.

Our office will not send documents until a receipt has been received in our office notifying that the balance of charges amount has been paid.

Please sign below and return this form by one of the following:

Email: FOI@defence.gov.au
 Fax: 02 6266 2112
 Post: CP1-6-001, PO Box 7910, CANBERRA BC ACT 2610

Signature: _____