




Australian Government
Department of Defence
Defence Support and Reform Group

Freedom of Information and
Information Management Branch
Department of Defence

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Our reference FOI 29/13/14



By email: 

Dear 

1. I refer to your email, dated 30 July 2013, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

"I would like to request information regarding ADF involvement in the Mardi Gras and the Defence Gay & Lesbian Information Service (DEFGLIS), specifically:

Item 1 - the risk assessment for ADF involvement in the Mardi Gras

Item 2 - the Administrative Instruction and control arrangements for ADF involvement in the Mardi Gras

Item 3 - any information related to the role, status and funding of DEFGLIS

Item 4 - any complaints that have been lodged regarding ADF involvement in the Mardi Gras"

Background

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

FOI decision maker

3. Colonel (COL) Mitch Kennedy, Deputy Chief of Staff, Army Headquarters is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

4. COL Kennedy identified five documents as matching the description of your request. A schedule of documents is at Enclosure 1. Documents in the form approved for release are at Enclosure 2. For ease of reference and for the purpose of processing this request, the decision

maker has added an FOI Item number to each of the documents, which corresponds with the schedule.

Decision

5. COL Kennedy has decided to:
- a. release in full two documents;
 - b. partially release three documents with deletions made in accordance with subsection 22(1) [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 47F [public interest conditional exemptions-personal privacy] of the FOI Act; and
 - c. refuse access to Items 1 and 3 of the request under subparagraph 24A(1)(b)(ii)[Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

Material taken into account

6. In making his decision COL Kennedy had regard to:
- a. the terms of the request;
 - b. the content of the identified document 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); and
 - e. advice received from officers within the department.

Reasons for decision

Section 47F – Personal Privacy

7. Items 2 and 4 contain personal mobile phone numbers, details relating to non-Defence personnel, unfounded allegations against ADF personnel and a signature of LTCOL rank equivalent or below. This information could be used to reasonably ascertain the identity of an individual and therefore satisfies the definition of personal information in section 4 of the FOI Act. To determine whether the disclosure of the identified personal information was unreasonable, COL Kennedy had regard to the criteria specified in section 47F(2) of the FOI Act:

- a. the extent to which the information is well known;
- b. whether the persons to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document; and
- c. the availability of the information from publicly accessible sources.

8. Against these three criteria, COL Kennedy found:

- a. the specific personal information listed is not well known;
- b. the 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. the information is not readily available from publicly accessible sources.

9. With reference to the assessment above, COL Kennedy considered that the release of personal mobile phone numbers, details relating to non-Defence personnel, unfounded allegations against ADF personnel and a signature of LTCOL rank equivalent or below would

be an unreasonable disclosure of personal information and therefore conditionally exempt under section 47F(1) of the FOI Act.

10. Section 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless access to the document would be contrary to the public interest.

Public interest considerations – Section 47F

11. When assessing whether the disclosure of the personal information is contrary to the public interest, COL Kennedy considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors]. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

12. In relation to section 11B(3)(a) of the FOI Act [Promote the objects of this Act (including all the matters set out in sections 3 and 3A)], information held by the Government is a national resource and release of the personal information would promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act.

13. However 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).

14. COL Kennedy considered the factors against disclosure of the identified information and found that release of the identified information could reasonably prejudice the protection of an individual's right to privacy, which is explicitly recognised as a factor against disclosure at paragraph 6.29(a) of the Guidelines. COL Kennedy also found that some of the identified information is unsubstantiated allegations of improper conduct, which is a factor against disclosure at paragraph 6.29(b) of the Guidelines.

15. The public interest factors against disclosure outweigh the factors for disclosure of the identified personal information and COL Kennedy deemed the information exempt under section 47F(1) of the FOI Act.

Section 24A(1) of the FOI Act

16. 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.

17. Paragraph 8.41 of the Guidelines also gives guidance as to what is required to be included within this statement of reasons to refuse a request under section 24A(1);

8.41 The statement of reasons given to the applicant should sufficiently identify the document and give reasons as to why it cannot be found or why it is known

that it no longer exists. The statement should describe the steps the agency took to search for it.

18. The process used by Defence in seeking the documents in this request was to firstly identify what type of document was sought, and then how documents of this type are usually created. At this point the specific areas that would have created, used, archived or otherwise had access to were identified and approached to seek through their records for the documents.

19. Item 1 sought a risk assessment for ADF involvement in the 2013 Mardi Gras. Risk assessments are usually conducted by the area responsible for managing and co-ordinating the event, task or operation. The following areas were approached for any risk assessments that they held;

- a. Army;
- b. Office of the Chief of the Defence Force;
- c. Office of the Vice Chief of the Defence Force; and
- d. Defence People Group; and
- e. Defence Security Authority

20. None of the above areas held any documents that would qualify as a "risk assessment".

21. Item 3 sought documents that contained "information related to the role, status and funding of DEFGLIS". Whilst there are aspects of Item 2 that make reference to DEFGLIS, no documents were found that could be wholly described as relating to the "role, status and funding of DEFGLIS". An officer within DEFGLIS advised that as DEFGLIS is not an official Department of Defence organisation, the Department of Defence would not hold any documents matching the terms of Item 3 of your request. The officer also advised that DEFGLIS receives no funding directly from the Department of Defence.

22. COL Kennedy was satisfied that "all reasonable steps" had been taken to locate the documents. COL Kennedy could find no evidence that a risk assessment was created specifically to address the risks of ADF involvement within the Mardi Gras. COL Kennedy was also advised, after conducting searches that the Department of Defence would not be likely to hold documents relating to the role, status and funding of DEFGLIS. COL Kennedy was satisfied that the documents cannot be found or do not exist, and refused access to these Items under section 24A(1) of the FOI Act.

Payment of Charges

23. In our letter, dated 6 June 2013, the department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay charges for the administration of your request on 30 July 2013, an invoice for the preliminary assessment deposit of [REDACTED] was subsequently sent directly from Defence Finance.

24. Upon completion of your request, Mr Brendan Wright, Acting/Assistant Director, FOI has decided to waive the outstanding charges of [REDACTED]. Accordingly, on this occasion you are not required to pay any further charges for the processing of your request.

Rights of review

25. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights", setting out your rights of review is at Enclosure 3.

FOI Disclosure Log

26. 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.

Further information

27. The FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2011C00803>.

28. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Matthew Ashauer
Case Manager
Freedom of Information

28 August 2013