



Australian Government
Department of Defence
Defence Support and Reform Group

Ministerial and Information
Management Branch
Department of Defence

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reference: FOI 029/14/15



By email: 

Dear 

1. I refer to your email, dated 6 August 2014, in which you revised a request, under the *Freedom of Information Act 1982* (FOI Act), for access to:

"...ADFIS report 5/2013 'Contextualised Unacceptable Behaviour Data', dated 17 May 2013."

2. 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

3. Captain B.W. Parker RAN, Provost Marshal, Australian Defence Force was the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

4. Captain Parker identified one document as matching the terms of your request, being a three page document.

Decision

5. Captain Parker decided to release the identified document 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.

Material taken into account

6. In making his decision Captain Parker 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. the Principles on open public sector information issued by the Information Commissioner.

Reason for decision – Section 47F of the FOI Act

7. Upon examination of the document Captain Parker found that it contained personal information, being the names of Defence personnel and their signatures. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Captain Parker 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.
- c. the availability of the information from publicly accessible sources.

8. Against these three criteria, he found that:

- a. the specific pieces of personal information relating to the individuals are not well known to the general public.
- b. the persons to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the document.
- c. this specific information is not readily available from publicly accessible sources.

9. Noting the above findings, Captain Parker decided that disclosure of the specific information would be an unreasonable disclosure of personal information belonging to other individuals. Accordingly, he considered that the material was conditionally exempt under section 47F of the FOI Act.

10. 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.

Public interest consideration – Section 47F

11. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Captain Parker considered the 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. He noted that disclosure may promote some of the objectives of the FOI Act, as information held by the Government is a national resource, however, the disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

12. 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.*
- (d) *allow a person to access his or her own personal information*'.

13. Captain Parker considered the public interest in promoting the objects of the FOI Act and was satisfied and did not believe the release of personal information such as names of members of Defence personnel and information that could readily lead to identification would inform public debate on any matter of public importance in any way.

14. While he noted the release of this material would be of some interest to you it would not inform public debate on any matter of public importance in any meaningful way. Additionally, disclosure of the information would not promote oversight of public expenditure nor would it allow a person to access his or her own personal information.

15. In coming to his decision, Captain Parker also considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act which lists factors which must not be taken into account in deciding whether access would, on balance, be contrary to the public interest. None of the factors he took into account were listed under subsection 11B(4) of the FOI Act.

16. Accordingly, Captain Parker considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents that match the scope of the request. Therefore, he decided that it would be contrary to the public interest to release the information considered exempt, under subsection 47F(1) of the FOI Act.

Clarifying information

17. Captain Parker provided the following clarifying information to assist your understanding of the data contained in the document.

18. *The Contextualised Unacceptable Behaviour Data report records the number of incidents reported to the Australian Defence Force Investigative Service (ADFIS) from 2008-2012. As such, the data refers to the number of allegations not the number of convictions.*

A description of the classifications used by ADFIS is as follows:

1. Sexual assault: *physical contact, or intent of contact, of a sexual nature directed toward another person where that person does not give consent, gives consent as a result of intimidation or deception, or consent is proscribed (i.e. the person is legally deemed incapable of giving consent because of youth, temporary/permanent (mental) incapacity or there is a familial relationship).*

2. Aggravated sexual assault: *as per 1 above, that involves sexual intercourse, infliction of injury or violence, possession/use of a weapon, consent proscribed/committed against a child; or committed in company (i.e. by two or more persons). Examples include rape and assault with the intent to commit a sexual act.*

3. Non-aggravated sexual assault: *as per 1 above but not involving any of the aggravating circumstances as defined by aggravated sexual assault. Examples include the threat of sexual assault or indecent assault that does not involve any aggravating circumstances (as described above).*

4. Non-assaultive sexual offences: *offences of a sexual nature, or intent there of, that involve the presence of a person but not physical contact with that person. Examples include 'grooming' offences or misuse use of a carriage services*

5. Non-assaultive sexual offences against a child: *as per 4 above but against a person under the age of 16 years.*

Rights of review

19. 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

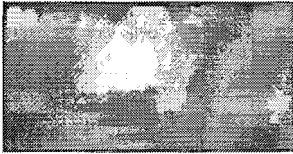
20. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions. Publication will occur on 10 September 2014.

Further information

21. FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2014C00122>.

22. 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



Theresa Stinson
Assistant Director - Media Case Management
Freedom of Information

3 September 2014

Enclosures:

1. Documents in the form for release
2. Fact Sheet: Freedom of Information – Your Review Rights