



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 055/15/16



Dear 

1. I refer to your request of 26 August 2015 in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“The minutes of meetings of the Australian Defence Human Research Ethics Committee that discussed the trial of mefloquine in 2001 and 2002.”

Background

2. On 2 September 2015, I wrote to you to advise of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date.

3. A revised preliminary assessment of charges was sent to you on 14 September 2015, taking into account your agreement to revise the scope so that it captured *only those parts of the minutes that discuss the trial in question*.

4. Your request was re-activated when we were made aware that the required deposit towards the FOI processing charges had been paid. As such, the statutory deadline for processing your request was 6 November 2015.

5. On 15 October 2015, I informed you that the decision maker had determined that there was a requirement to consult with third parties under section 27 [Consultation –business documents] 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 26A, 27 or 27A] of the FOI Act, the statutory timeframe was amended to 5 December 2015.

6. I note that the above mentioned due date was a Sunday. In accordance with the FOI Guidelines issued by the Australian Information Commissioner, if the last day for notifying a decision falls on a Saturday, Sunday or a public holiday, the timeframe will expire on the first day following which is none of those days. As such, the due date for you to receive a response is today [7 December 2015].

7. 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

8. Mr Paul Naveau, Director, Health Materiel, Logistics and Pharmacy, Joint Health Command was the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

9. Mr Naveau identified 19 documents as matching the description of your request. A schedule of the identified documents is at Enclosure 1.

10. Mr Naveau determined that your request was seeking access to existing records that related to trial activity, rather than only records from the years specified in the scope.

Decision

11. Mr Naveau decided to partially release 11 of the identified documents with deletions, 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 exempt under section 47F [Public interest conditional exemptions – personal privacy] of the FOI Act. He decided to release the remaining documents intact.

12. Mr Naveau also decided to remove some material, in accordance with section 22 of the FOI Act, which did not match the scope of the request. Specifically, material that related to issues other than Mefloquine discussed at the ADHREC meetings and agreed by you as beyond the scope of the request. Whole pages containing irrelevant material have been removed in their entirety.

Material taken into account

13. In making his decision, Mr Naveau had regard to:

- a. the terms of the FOI request;
- b. the content of the documents in issue;
- c. relevant provisions in the FOI Act;
- d. Defence guidance material on the FOI Act and the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the guidelines); and
- e. advice provided by the area whose duties relate to the requested documents.

Reasons for Decision

Section 47F – Personal Privacy

14. Upon examination of the records Mr Naveau found that records 2, 3, 4, 6, 7, 9, 10, 11, 12, 14 and 16 contained, to varying degrees, personal information. Specifically, names, titles/ranks and third party medical information. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, Mr Naveau had regard to:

- (a) the extent to which the personal 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;
- (d) how the information was obtained, that is, in confidence or using information gathering powers; and
- (e) whether any public purpose would be achieved through release of the documents.

15. Against those criteria, Mr Naveau found that:

- (a) the specific personal information is not well known to the general community;
- (b) whilst some of the information is known to certain elements and interest groups, the person/s to whom the information relates, is not known to be, or to have been, associated with the matters dealt with in the document by the general community;
- (c) the specific information is not readily available from publicly accessible sources;
- (d) no particular public purpose would be served by the release of member details and information; and
- (e) the withholding of personal details does not detract from the sense of the documents to be released.

16. Noting the findings against the above criteria, Mr Naveau decided that the disclosure of this type of information as contained in the excerpts of the meeting minutes would constitute an unreasonable disclosure of personal information. Accordingly, he considered this material to be conditionally exempt under section 47F of the FOI Act.

17. 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 considerations – section 47F Exemptions

18. Mr Naveau noted that conditionally exempt documents do carry a public interest test. He considered section 11B of the FOI Act which sets out factors favouring access and irrelevant factors when considering the public interest test.

19. 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.

20. Mr Naveau considered that the public interest in promoting the objects of the Act had been satisfied. He found that redacting the specific personal information (names and titles) from the documents does not detract from the sense of the documents and the public disclosure of government-held information.

21. Mr Naveau considered that there is a public interest in protecting the privacy of individuals whose personal details appear in the documents. This is particularly the case given the requirement in a research setting to have frank and forthright views expressed in pure academic and research terms. He considered that disclosure of personal information in this instance would be contrary to the public interest as it has the potential to jeopardize free discussion given the precedent of disclosure and hence devalue to a limited degree the work of the ethics committee.

22. In coming to the above decision, Mr Naveau had regard to subsection 11B(4) [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. No irrelevant factors were taken into account as were listed under subsection 11B(4) of the FOI Act.

23. Accordingly, Mr Naveau considered that the public interest factors against disclosure outweigh the factors for disclosure of the personal information in the documents that match the scope of this request. Therefore, he decided that it would be contrary to the public interest to release the information considered exempt under section 47F of the FOI Act.

Payment of Charges

24. In order to finalise your request, you are required to pay the remaining [REDACTED]. An invoice for the outstanding balance will be forwarded to you within the next 5 working days. Documents will not be released until we receive your proof of payment.

Release of documents

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

26. I would also note that there are some spacing issues in the text contained in some of the documents. It appears to be random and is as a result of a technical issue within the scanning and redacting process in Adobe.

FOI Disclosure Log

13. 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

14. 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

15. 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

16. 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

17. 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

18. Contact details for the Information Commissioner are above.

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

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management

7 December 2015

Enclosures:

1. Schedule of documents
2. Freedom of Information Payment Authorisation Form



**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 \$	\$137.25		

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: _____