



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 57/15/16



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

I refer to your correspondence, dated 1 September 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“Request for access to documents relating to an inquiry into an incident from 2000 in Bouganville when a group of Defence members filmed a video mocking gay and lesbian Mardi Gras”

Background

On 1 September 2015, our office informed you that the statutory deadline for you to receive your decision on this request was 1 October 2015.

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

Colonel Mitch Kennedy, Director Personnel Policy, Army is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

Colonel Kennedy identified 11 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. The decision maker has added an FOI Item number to each of the documents, which corresponds with the schedule.

Decision

Colonel Kennedy has decided to:

- a. release six documents in full; and
- b. partially release five 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.

Material taken into account

In making his decision, Colonel Kennedy had regard to:

- a. the terms of the request;
- b. the content of the identified documents in issue;
- c. relevant provisions in the FOI Act; and
- d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines).

Reasons for decision

Section 47F – Personal Information

On examination of the documents Colonel Kennedy identified personal information specifically mobile phone numbers and personal leave information of persons other than you. 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, Colonel Kennedy had regard to the criteria specified in section 47F(2) of the FOI Act.

Section 47F(2) states;

47F Public interest conditional exemptions – personal privacy

General Rule

- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (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 document;*
 - (c) *the availability of the information from publicity accessible sources;*
 - (d) *any other matters that the agency or Minister considers relevant.*

Against these criteria, he 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.

With reference to the assessment above, Colonel Kennedy considered that the release of mobile phone numbers and personal leave information would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

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

When assessing whether the disclosure of the personal information is contrary to the public interest, Colonel 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 his decision.

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.

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).

Paragraph 6.29 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factor Colonel Kennedy found particularly relevant to this request is that disclosure of the documents could reasonably be expected to prejudice the protection of an individual's right to privacy (Paragraph 6.29(a))

He found that the public interest factor against disclosure outweigh the factors for disclosure of the identified personal information and he deemed the information exempt under section 47F(1) of the FOI Act.

Section 22 – Irrelevant matter

After examination of the document and taking into account the scope of your request, Colonel Kennedy found that serial 9 contained material that did not fall within the scope of your request. He therefore decided to remove that material in accordance with section 22(1)(a)(ii) of the FOI Act [access to edited copies with exempt or irrelevant matter deleted].

Section 22(1)(a)(ii) of the FOI Act states the following:

(1) This section applies if:

(a) an agency or Minister decides:

(i) to refuse to give access to an exempt document; or

(ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.

Declassification of documents

A number of the documents matching the scope of this request were classified. The decision maker has declassified the versions of the documents that are approved for release.

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

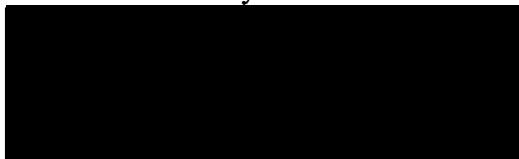
Contact details for the Commonwealth Ombudsman are below:

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



Michelle Rueckert
Assistant Director

1 October 2015

Enclosures:

1. Schedule of documents
2. Documents in the form for release