



Australian Government
Department of Defence
Defence Support and Reform Group


Ministerial and Information
Management Branch
Department of Defence

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Our reference: FOI 077/13/14



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your emailed letter, dated 22 August 2013, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

"...I am seeking access to documents identified in your decision letter relating to

Department of Defence: Senate Budget Estimates 3 - 4 June 2013.

Specifically, I am seeking the following briefing papers:

52. Treatment of Gay ADF Members."

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. Mr Robert McKellar, Director, Workforce Strategy and Plans, Defence People Group was the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

4. Mr McKellar identified one document matching the scope of your request, titled *Senate Estimates Brief: Personnel 04: Treatment of Homosexual Australian Defence Force Members.*

Decision

5. Mr McKellar decided to partially release the document with deletions, in accordance with section 22 of the FOI Act, on the grounds that the deleted material is considered exempt under section 47F [personal privacy] of the FOI Act.

Material taken into account

6. In making his decision Mr McKellar 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);
 - e. the Principles on open public sector information issued by the Information Commissioner; and

Section 47F – personal privacy

7. Mr McKellar found that the identified document contained personal information such as names, ranks, positions held and other personal information of Defence employees and their families. Mr McKellar was satisfied that the material constitutes personal information, and its disclosure would be considered to be unreasonable.

8. In addressing the exemption Mr McKellar was required to consider the following when addressing personal privacy:

- 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 matter dealt with in the documents;
 - c. the availability of the information from publicly accessible sources; and
 - d. any other matter the agency or Minister considers relevant.
9. Against these criteria, Mr McKellar found:
- a. that some of the material may be known within the ADF community, however, Mr McKellar does not consider that the specific personal information is well known within the general public,
 - b. the individuals whose personal information is contained in the documents are not widely known within the general public to be associated with the matter dealt with in the document, and
 - c. in addition, Mr McKellar has taken into account advice received from officers of the agency and agreed that disclosure of personal information contained within the document could have a deleterious affect on the well being of those involved.

10. Taking the above into account, Mr McKellar considered that the identified material is conditionally exempt under section 47F of the FOI Act.

Section 47F – public interest considerations

11. Subsection 11A(5) of the FOI Act provides that conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest. The guidelines state (at 6.8-6.9):

The term 'public interest' is necessarily broad and non-specific because what constitutes the public interest depends in the particular facts of the matter and the context in which it is being considered...

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

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

13. 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.

14. Mr McKellar considered that the public interest in promoting the objects of the Act have been satisfied as, in his opinion, merely removing names, ranks, positions held and other personal information of Defence employees and their families from the document does not detract from public disclosure of government-held information.

15. Mr McKellar did not consider that the final two considerations were relevant in this instance as the information does not deal with public expenditure or relate to your own personal information.

16. Taking all of the above into consideration, on balance, Mr McKellar considered that disclosure of the names, ranks, positions held and other personal information of Defence employees and their families would be contrary to the public interest.

17. In coming to the above decision, Mr McKellar 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. None of the factors he took into account were listed under subsection 11B(4) of the FOI Act.

18. In addition, Mr McKellar considered the obligation of Defence to be seen to be protecting the privacy of its members. Further, Mr McKellar considered releasing the material without consulting with the parties would be unreasonable, and for reasons explained by officers of the agency it was decided that to formally consult may not necessarily be appropriate in this instance.

19. In reaffirming this decision Mr McKellar referred to the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* in particular paragraph 6.131 which states:

The Federal Court affirmed the approach provided in Re Chandra and stated that there are four factors for determining whether disclosure is unreasonable in all the circumstances. The four factors are whether:

- (a) the author of the document is identifiable*
- (b) the documents contain third party personal information*
- (c) release of the documents would cause stress on the third party*
- (d) no public purpose would be achieved through release.*

20. Accordingly, Mr McKellar considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents that match the scope of this request. Therefore, Mr McKellar has 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

21. In our letter, dated 30 August 2013, after deducting the free decision making time, 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 3 September 2013, noting that a deposit was not required.

22. Upon completion of your request, after deducting the free decision making time, the actual amount for processing was calculated to be [REDACTED]. On this occasion I have decided not to impose the charges amount as the administrative cost of processing the payment would outweigh the collectable amount.

Rights of review

23. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights" is at Enclosure 2.

FOI Disclosure Log

24. 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 will also publish this decision notice with privacy deletions. Unless otherwise agreed, Defence will publish this request on 8 October 2013.

Further advice

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

26. Should you have any questions about this matter please contact me directly on (07) 3332 6359. Alternatively, the FOI team can also be contacted on the details at the top of this letter.

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

25 September 2013

Enclosures:

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