



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 90/14/15



By email: [Redacted]

Dear [Redacted]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 23 September 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

‘Any briefs; draft copies; memorandums; minutes of meetings; references to secondary material used in decision making processes; loose minutes; interagency correspondence; etc, that went into creating or formulating both the Defence 1994 and 2000 policies that were attached to my original request from initial drafts to final sign off.’

Background

2. On 1 October 2015 our office 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. You provided the receipt for your payment of the required deposit on 6 November 2015. As such, the statutory deadline for processing your request is 2 December 2015.

3. 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

4. Group Captain Catherine Wallis, Director Corporate and Community Relations – Air Force is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

5. GPCAPT Wallis identified seven documents as matching the description of your request.

6. The decision in relation to each document is detailed in a schedule of documents, which will be provided when the documents are released (refer below for further information). When

documents are released, you will note the decision maker has added an FOI Item number to each of the documents, which corresponds with the schedule.

Decision

7. GPCAPT Wallis has decided to:
 - a. release in full two of the documents;
 - 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;
 - c. partially release three of the 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 47E [public interest conditional exemptions – certain operations of agencies] of the FOI Act;
 - d. refuse access to documents in relation to the 2000 policy under section 24A(1)(b)(ii) [documents do not exist].

Material taken into account

8. In making her decision, GPCAPT Wallis 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); and

Reasons for decision

Exemption claim - Section 47F of the FOI Act

9. Upon examination of the documents, GPCAPT Wallis identified signatures of persons other than you. This material satisfies the definition of personal information in section 4 of the FOI Act. GPCAPT Wallis considers the disclosure of this information would constitute an unreasonable disclosure of personal information of a person other than you.

10. The Guidelines note that “*the personal privacy exemption is designed to prevent ‘unreasonable’ invasion of third parties privacy*”. In accordance with subsection 47F(2), in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, GPCAPT Wallis 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 document;
 - c. the availability of the information from publicly accessible sources; and
 - d. any other matters that the agency considers relevant.
11. Against those criteria, GPCAPT Wallis found that:
- a. the specific personal information is not well known to the general community;
 - b. the people to whom the information relates are not known to have been associated with the matters dealt with in the documents;
 - c. the personal information is not readily available from publicly available sources; and
 - d. the material considered to be exempt is information that the individuals would reasonably be expected not to have disclosed to a third party without their consent.

Rights of access – section 11A

12. 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 on 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.

Public interest considerations – section 47F

13. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, GPCAPT Wallis considered the range of relevant factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. While disclosure may promote some of the objects of the FOI Act, GPCAPT Wallis does not consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities.

14. While release of the information may 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 this specific information would not promote oversight of public expenditure, nor would it allow you access to your own personal information. Further, GPCAPT Wallis considers that the protection of an individual’s right to privacy, specifically their signatures, outweighs any public interest there may be in the release of this material.

15. Therefore, GPCAPT Wallis has decided that it would be contrary to the public interest to release the material identified in documents, items 2, 3, 5, 6, 7, considered exempt under section 47F(1) of the FOI Act.

Exemption claim - Section 47E(d) of the FOI Act

16. Section 47E(d) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency...

17. Where access has been denied to information under section 47E(d) of the FOI Act, GPCAPT Wallis considered that the material could reasonably be expected to have substantial adverse effect on the proper and efficient conduct of operations of Defence.

18. As noted above, use of the word ‘could’ in this provision requires no more than a degree of reasonableness being applied in deciding whether disclosure would cause the consequences specified. The reasonable expectation refers to material regarding details of the processes and procedures relating to aircraft.

19. GPCAPT Wallis is satisfied that the expected effect of disclosing to you material identified exempt under section 47E(d) could have a substantial adverse effect on the proper and efficient conduct of the operations of Defence, in that once the information was made publically available it could divulge areas of capability interest.

20. In light of the above, GPCAPT Wallis has decided that specified material identified in the documents, items 3, 5 and 6, is conditionally exempt pursuant to subsection 47E(d) of the FOI Act.

21. Subsection 11A(5) [access to documents on request] of the FOI Act requires Defence to allow access to such conditionally exempt material unless, in the circumstances and on balance, access would be contrary to the public interest.

Public Interest Consideration – Section 47E

22. 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 on 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.

23. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, GPCAPT Wallis considered the range of factors that favour access to a document, which is set out in section 11B(3) [public interest exemptions – factors favouring accessing] of the FOI Act.

24. 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.”*

25. GPCAPT Wallis notes 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.

26. While GPCAPT Wallis notes that the full release of the information contained in the document would be of interest to you it would not inform public debate on any matter of public importance in a meaningful way. In addition, disclosure of the information would not promote oversight of public expenditure or allow you further access to your own personal information. Furthermore, disclosure of the information under section 47E would prejudice Defence’s ability to obtain similar information in the future and would compromise the ability of the RAAF to complete its mandated role, namely defending Australia and its national interests from the air.

Section 24A(a) of the FOI Act

27. Section 24A(1) of the FOI Act states:

“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.”*

28. 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):

“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.”

29. A search of electronic corporate files and objects in Defence’s corporate electronic filing system Objective was conducted using the search parameters ‘unusual’, ‘aerial’, ‘sightings’, ‘UAS’ ‘UFO’ and no documentation was found in relation to the 2000 policy.

30. GPCAPT Wallis is satisfied that all reasonable steps have been taken to locate the documents. She is satisfied that the documents cannot be found or do not exist, and refuses access to these items under section 24A(1) of the FOI Act.

Payment of Charges

31. In order to finalise your request, you are required to pay the remaining [REDACTED]. Documents will not be released until we receive your proof of payment.

32. Please find attached at Enclosure 1 a Payment Authorisation Form for the balance for you to complete and return.

Declassification of documents

33. 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

34. 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

35. 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: FOIRReview@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

36. 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

37. 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
CPI-6-14
PO Box 7911
CANBERRA BC ACT 2610

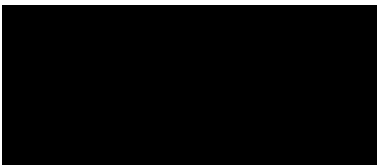
38. Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)
Fax: 02 6276 0123
Post: Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

39. Contact details for the Information Commissioner are above.

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

Yours sincerely



Dr Melanie Beacroft
Case Manager, Freedom of Information

1 December 2015

Enclosures:

1. Freedom of Information Payment Authorisation Form