



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 103/15/16

By email: [REDACTED]

Dear [REDACTED]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your correspondence, dated 5 October 2015, in which you confirmed the scope of the documents requested, under the *Freedom of Information Act 1982* (FOI Act), to:
- “In October 2014 three ADF members travelled to Washington for a conference regarding transgender personnel and military service. These ADF members were: Major Donna Harding, Squadron Leader Cate Humphries, and Squadron Leader Vince Chong. I request the*
- *administrative instruction [Item 1],*
 - *post activity report [Item 2] and*
 - *records of travel, accommodation and other costs for these personnel to attend this activity [Item 3].”*

Background

2. The statutory timeframe for you to receive your response is by 4 November 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.
4. Ms Polly Reynolds, Accredited Decision Maker, Defence People Group, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

5. Ms Reynolds identified four documents as matching the description of your request. Documents in the form approved for release are at Enclosure 1. The decision maker has added an FOI Item number to each of the documents.

Decision

6. Ms Reynolds has decided to:
- a. refuse access to Item 1 of the request under subparagraph 24A [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act;
 - b. release one document in full, and
 - c. partially release three 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 [personal privacy] of the FOI Act.

Material taken into account

7. In making her decision, Ms Reynolds 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;
 - d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
 - e. advice received from officers within the department.

Reasons for decision

Section 24A of the FOI Act

8. No relevant documents could be found that match the scope of Item 1 of this request.

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

24A 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.*

10. The Guidelines also give guidance as to what is required to be included within this statement of reasons to refuse a request under section 24A(1) of the FOI Act:

3.84: 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.

11. Advice provided by the Directorate of Diversity, the area responsible for the coordination of attendance at this event, advised that no administrative instruction was prepared.

12. Based on the above, Ms Reynolds was satisfied that “all reasonable steps” have been taken to locate the requested document. Therefore, Ms Reynolds was satisfied that the document cannot be found or does not exist, and refused access to the requested documents under section 24A of the FOI Act.

Section 47F - Personal privacy

13. Upon examination of the documents, Ms Reynolds identified information, specifically names, signatures, personal identification numbers and personal information of individuals other than you. This material satisfies the definition of personal information in section 4 of the FOI Act. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, Ms Reynolds 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; and
- c. the availability of the information from publicly accessible sources.

14. Against those criteria, Ms Reynolds found that:

- a. the specific personal information is not well known to the general community;
- b. the person to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the documents; and
- c. the specific information is not readily available from publicly accessible sources.

15. With reference to the assessment above, Ms Reynolds considered that the release of names, signatures, personal identification numbers and personal information of individuals other than you would be an unreasonable disclosure of personal information and therefore conditionally exempt under section 47F(1) of the FOI Act.

Sections 47F - Public interest considerations

Factors in favour of disclosure

16. The following factors in favour of disclosure were considered, including whether disclosure would:

- a. promote the objects of the FOI Act;
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure; and
- d. allow a person to access his or her personal information (s 11B(3)).

17. It is reasonable to conclude that:

- a. the information not disclosed is of such a kind that release would not:
 - i. inform the community about Government operations;
 - ii. reveal or substantiate any deficiencies in the conduct of administration of the department or an official or that the department or official has engaged in misconduct, or negligent, improper or unlawful conduct; or
 - iii. have the effect of enhancing the scrutiny of government decision making;
- b. release of the information is unlikely to inform debate on a matter of public importance;
- c. the information does not relate to the effective oversight of public expenditure; and
- d. release would not allow you access to your personal information.

18. The information is highly specific to the individuals involved and release of this information could cause them distress..

Factors against disclosure

19. The factors discussed above regarding whether the disclosure of the information would be unreasonable, in particular that the disclosure would unreasonably affect the privacy of third parties, are factors against disclosure.

20. Ms Reynolds considered that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The public interest is better served in this case by maintaining the personal privacy of third parties named from public disclosure.

21. In coming to the above decision, Ms Reynolds also considered subsection 11B(4) [public interest exemptions - irrelevant factors] of the FOI Act. None of the factors considered were those listed in subsection 11B(4).

22. Therefore, Ms Reynolds decided that it would be contrary to the public interest to release the information considered exempt under section 47F of the FOI Act.

FOI Disclosure Log

23. 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

24. 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

25. 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

26. 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

27. 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

28. Contact details for the Information Commissioner are above.

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

Yours sincerely



Andrea Sansom
Assistant Director
Freedom of Information

4 November 2015

Enclosure:

1. Documents in the form for release