



Australian Government
Department of Defence

Freedom of Information
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CANBERRA BC ACT 2610
Tel: 02 626 62200
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FOI@defence.gov.au

Our reference: FOI 107/15/16

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your correspondence, dated 9 October 2015, in which you confirmed the scope of the documents requested, under the Freedom of Information Act 1982 (FOI Act), to:

“Item 1 ‘Any halal certification certificates that have been supplied for ADF ration packs since 2010.’

Item 2 ‘Any reports, briefings or discussion papers regarding halal certification, or the provision of food that is halal, in regards to ADF ration packs since 2010.’

‘Exclude the personal details of Defence officers, such as names, signatures and mobile telephone numbers. Exclude duplicates of documents, and documents sent to, or received from the applicant.’

Background

2. On 9 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 18 January 2016. As such, the statutory deadline for processing your request was 15 February 2016.

3. The purpose of this letter is to provide you with the decision relating to the documents that are the subject of your request.

Decision making authority

1. Group Captain (GPCAPT) Ken Robinson, Director of Personnel – Air Force is authorised to decide whether to grant requests for access to documents under the FOI Act.

Identified document

2. GPCAPT Robinson identified one document matching Item 2. A copy of the document is attached as Enclosure 1. No documents matching Item 1 were identified.

Decision

3. GPCAPT Robinson decided to refuse access to Item 1 under section 24A(1)(b)(ii) [documents do not exist] of the FOI Act.
4. Following examination of the document matching Item 2, GPCAPT Robinson decided to partially release the document with deletions made 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 sections 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act and/or 47E [certain operations of agencies] of the FOI Act.

Reasons

Material taken into account

5. In making my decision he had regard to:
 - a. the terms of the request
 - b. the content of the document in issue
 - c. relevant provisions in the FOI Act
 - d. paragraph 6.29 the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines)
 - e. advice from Defence Officials.

Reasons for the decision

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

(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.*
7. Paragraph 3.84 of the Guidelines also provides guidance as to what is required to be included within this statement of reasons to refuse a request under section 24A(1):

3.84 The statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search

8. In conducting searches in relation to Item 1 of the request, GPCAPT Robinson was advised that whilst there are four types of halal meal modules, none of them are currently being used for ADF Combat Ration Packs and therefore Capability Acquisitions Sustainment Group (CASG) does not require evidence of certification. A search of Defence's electronic record management system was also conducted and no halal certificates for ADF Combat Ration Packs were located. Based on the above information, GPCAPT Robinson is satisfied that there are no documents matching Item 1 of your request.

Irrelevant matter - Section 22(1) of the FOI Act

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

(1) This section applies if:

(a) an agency or Minister decides:

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

11. Upon examination of the documents, GPCAPT Robinson found that some documents contained material regarding matters that do not relate to the scope of the request. He considered that the material would disclose information irrelevant to the scope of the request. As such, in accordance with subparagraph 22(1)(a)(ii) of the FOI Act, GPCAPT Robinson decided to remove or redact the material outside of the scope of the request.

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

12. 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...

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

14. 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 rationing requirements.

15. He is satisfied that the expected effect of disclosing to the applicant 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 be used by individuals to determine operational resource requirements.

16. In light of the above, GPCAPT Robinson decided that specified material identified in the document located matching Item 2 is conditionally exempt pursuant to subsection 47E(d) of the FOI Act.

17. 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

18. 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.

19. In assessing whether disclosure of the conditionally exempt material is, on balance, contract to the public interest, GPCAPT Robinson 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.

20. 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.*

21. He 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. Furthermore, disclosure of the information would not promote oversight of public expenditure or allow you access to your personal information.

22. While GPCAPT Robinson noted that the full release of the information contained in the document would be of interest to the applicant it would not inform public debate on any matter of public importance in a meaningful way. It could also be reasonably expected to compromise the security and conduct of operations as individuals could use the information to determine operational resource requirements.

Irrelevant Factors – section 11B(4)

23. In coming to the above decision, GPCAPT Robinson 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 GPCAPT Robinson took into account were listed under subsection 11B(4) of the FOI Act.

24. Accordingly, he considered that, on balance, the public interest factors against disclosure outweighed the factors for disclosure of the exempt material contained in the document. Therefore, GPCAPT Robinson decided that it would be contrary to the public interest to release the information considered under subsection 47E (d) of the FOI Act.

Payment of Charges

25. On this occasion, I have decided to exercise my delegations and to cap the charges payable to the deposit amount already paid.

FOI Disclosure Log

26. 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

27. 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

28. 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

29. 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

30. 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

31. Contact details for the Information Commissioner are above.

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

Yours sincerely



Michelle Rueckert
Assistant Director, Freedom of Information

15 February 2016

Enclosure:

1. Document in the form for release