

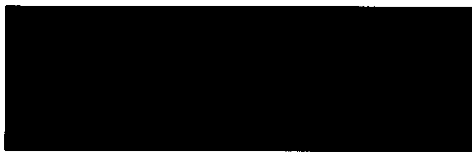


Australian Government
Department of Defence
Defence Support and Reform Group

Ministerial and Information
Management Branch
Department of Defence

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Our reference: FOI 109/13/14



Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 15 September 2013, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

"records of the Department of Defence since 1985 to the present concerned with the department's archives centre's administration of the department's series of files for the period 1966 to 1974 designated CRS A1946.

The administration mentioned above includes the preparation for the transfer of any items of this series to NAA custody and sentencing, including destruction of items, including but not limited to items 1969/785, 1970/372, 1970/408, 1971/2905 and 1971/2959.

The request covers correspondence including electronic both within the department and with the NAA and other Commonwealth agencies."

2. On 16 September 2013, you were advised by email that your request in its current form would substantially and unreasonably divert resources of Defence from its other operations and would therefore attract practical refusal under section 24AA of the FOI Act. Following further discussions, on 24 September 2013, you agreed to proceed with the following revised scope:

"A PDF copy of the three electronic AR48 spreadsheets for series A1946 held by Corporate Archives"

Background

3. On 26 September 2013 I 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. Your letter agreeing to pay charges for the processing was received in this office on 26 September 2013. As such, the statutory processing time for your request expires on 23 October 2013.

4. 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

5. Mr Andrew Lovelock, Acting Director Defence Archives, Defence Support and Reform Group was the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

6. Mr Lovelock identified two documents as matching the description of your request:
- a. A 1946 – Notification of records sentenced 1998; and
 - b. A 1946 – Notification of records sentenced 1997.
7. Documents in the form approved for release are at Enclosure 1.

Decision

8. Mr Lovelock has decided to:
- a. Release A 1946 – Notification of records sentenced 1998 in full;
 - b. Partially release A 1946 – Notification of records sentenced 1997 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 section 33 [Documents affecting national security, Defence or international relations]; and
 - c. Refuse access to the third spreadsheet identified in the revised scope under subparagraph 24A(1)(b)(ii) [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

Material taken into account

9. In making his decision Mr Lovelock 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; 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 33 – Documents affecting national security, Defence or international relations

10. In reviewing the document Mr Lovelock consulted with subject matter experts from Defence Classified Archival Records Review and decided to exempt the document from release, in part, pursuant to subsection 33(a)(iii) of the FOI Act.

11. Subsection 33(a)(iii) of the FOI Act states:

A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

(i) the security of the Commonwealth;

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth...

12. In forming his decision, Mr Lovelock considered Paragraph 5.30 of the Guidelines:

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisation and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relationships between government agencies.

13. Mr Lovelock was satisfied that the relevant material is exempt under subparagraph 33(a)(iii) of the FOI Act because it is of a sensitive nature. Mr Lovelock considered that some material contained in the document, if disclosed, would jeopardise the international relations of the Department of Defence and has the potential to harm the positive working relationships Australia has with other governments. If this material was to be released it could result in other nations being less willing to enter into frank discussions with Australia in the future. The exempt material if released publicly may also undermine the trust between Australia and its international partners.

14. For the reasons outlined above, Mr Lovelock has deleted material in accordance with section 33(b) of the FOI Act.

Section 24A – Requests may be refused if the documents do not exist

15. Mr Lovelock has refused access to the document identified as the third spreadsheet under section 24A(1)(b)(ii) [Documents do not exist] of the FOI Act. Section 24A(1) of the FOI Act states:

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.

16. 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);

8.41 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.

17. An error was made during the scoping of this request. There was never a third spreadsheet in existence. In light of this, Mr Lovelock has refused access to the third spreadsheet under section 24A(1)(b)(ii) of the FOI Act.

Payment of Charges

18. In our letter, dated 26 September 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 26 September 2013, an invoice for the preliminary assessment deposit of [REDACTED] was subsequently sent directly from Defence Finance.

19. Accordingly, you are required to pay the remaining [REDACTED] in order to finalise your request. An invoice for the balance will be sent to you over the coming week. Once you have completed your payment please provide a copy of the receipt to foi@defence.gov.au.

Rights of review

20. 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

21. 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. I will advise you of the publication date when the documents are dispatched to you.

Further advice

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

23. Should you have any questions, please contact this office.

Yours sincerely



Mrs Sally Philp
Assistant Director
Freedom of Information

18 October 2013

Enclosures:

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