



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 110/14/15



By email: [Redacted]

Dear [Redacted]

References

- A. Request from [Redacted] dated 14 October 2014
- B. Email Mr John Peterson to [Redacted] dated 17 October 2014 – Preliminary Inquiries
- C. Email Mr John Peterson to [Redacted] dated 22 October 2014 – Additional information
- D. [Redacted] to Mr John Peterson dated 23 October 2014 – Revised scope
- E. Mr John Peterson to [Redacted] dated 24 October 2014 – Further consideration of scope
- F. Email [Redacted] to Mr John Peterson dated 3 November 2014 – Agreed scope
- G. Email Mr John Peterson to [Redacted] dated 6 November 2014 – Preliminary assessment of charges
- H. Copy of FOI Deposit received on 1 December 2014

1. Reference A sought access, under the *Freedom of Information Act 1982* (FOI Act), to documents relating to Operation HABITAT.

Background

2. Following exchanges of References B to F, the scope of your request was agreed as seeking access, under the FOI Act, to:

“the documents considered by the Nature of Service (NOS) Branch when preparing the initial and subsequent review of the Conditions of Service for ASC OP Habitat, which was conducted during the period 16 May 1991 to 30 June 1991; and [Item 1]

any Signals received that led to changes to the ASC OP Habitat toward the application of the Rules of Engagement (ROE) and Orders for Opening Fire (OFOF) during the period 16 May to 30 June 1991.” [Item 2]

3. The thirty-day statutory period for processing your request commenced on 14 October 2014, but was suspended on 17 October 2014 while we negotiated the terms of your request and dispatched Reference G to you. The thirty-day statutory period for processing recommenced on 1 December 2014, when we received Reference H. Therefore, the thirty-day statutory deadline will expire on 26 December 2014.

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. Colonel (COL) M Thompson, Director Future Military Commitments, Office of the Vice-Chief of the Defence Force, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on your request.

Documents identified

6. COL Thompson identified six documents that fall within the scope of your request. The details of the documents are listed in the schedule of documents at Enclosure 1.

Decision

7. COL Thompson decided to:
- a. release three documents in their entirety;
 - b. release two documents 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 the deleted material is either not relevant to the scope of the request, and/or considered exempt under section 47F [Public interest conditional exemptions – personal privacy] of the FOI Act; and
 - c. did not consider access to the document identified as Serial 5 in the schedule, on the grounds that is considered to be in the public domain as it was previously released and published on the Defence FOI Disclosure Log in response to FOI 304/12/13.

Material taken into account

8. In making his decision, COL Thompson had regard to:
- a. the terms of the request;
 - b. the content of the 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);
 - e. Defence guidance material on the FOI Act;
 - f. advice from Defence officers with the responsibility for matters relating to the documents requested;
 - g. advice received from the Defence in-house legal team.

Reasons for decision

Section 22

9. Where COL Thompson deleted material in accordance with subparagraph 22(1)(a)(ii) of the FOI Act, he did so on the grounds that the material was not used in any capacity during Nature of Service Branch deliberations, and therefore was not considered relevant to your request.

Section 47F - Public interest conditional exemptions – personal privacy

10. On examination of the documents COL Thompson found that they contain the signatures belonging to individuals of LTCOL status or below, other than you. It is therefore appropriate to consider whether this information is exempt from release under the FOI Act.

11. This information could be used to reasonably ascertain the identity of an individual and therefore satisfies the definition of personal information in section 4 of the FOI Act. To determine whether the disclosure of the identified personal information was unreasonable, COL Thompson had regard to the criteria specified in section 47F(2) of the FOI Act.

12. Section 47F(2) states:

47F Public interest conditional exemptions – personal privacy

General Rule

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

(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 publicity accessible sources;

(d) any other matters that the agency or Minister considers relevant.

13. Against these criteria, COL Thompson found:

- a. the specific personal information listed is not well known;
- b. the individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents; and
- c. the information is not readily available from publicly accessible sources.

14. With reference to the assessment above, COL Thompson considered that the release of the names and signatures would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

15. Section 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless access to the document would be contrary to the public interest.

Public interest considerations – Section 47F

16. When assessing whether the disclosure of the personal information is contrary to the public interest, COL Thompson considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors]. COL Thompson advised that none of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making his decision.

17. COL Thompson noted that in relation to section 11B(3)(a) of the FOI Act, information held by the Government is a national resource, and release of the personal information would promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act. However disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

18. Paragraph 6.29 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factor COL Thompson found particularly relevant to this request is that disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.

19. Based on the above, COL Thompson found that the public interest factors against disclosure outweighed the factors for disclosure of the identified personal information, and he deemed the information exempt under section 47F(1) of the FOI Act.

Payment of Charges

20. At Reference B, we advised you that after deducting the free decision making time, the Department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay the estimated charges and subsequently provided evidence of your payment at Reference H.

21. Upon completion of your request, after deducting the free decision making time, the actual amount for processing was calculated to be [REDACTED]. The remaining balance is the difference between actual charges and the deposit of [REDACTED], you have already paid.

22. Accordingly you are required to pay the remaining [REDACTED] in order to finalise your request. Please find at Enclosure 2, a Payment Authorisation Form for the balance. Once you have completed the form please return it to foi@defence.gov.au. The documents in the form approved for release will be promptly provided following notification of receipt of your payment.

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 five working days following receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

Rights of review

24. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights", setting out your rights of review is at Enclosure 3.

Further information

25. FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2014C00122>.

26. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



John Peterson
Freedom of Information

18 December 2014

Enclosures:

1. Schedule of documents
2. Payment Authorisation
3. Fact Sheet: Freedom of Information – Your Review Rights