NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email of 28 January 2016 in which you agreed to proceed with the following revised scope, under the Freedom of Information Act 1982 (FOI Act):

   "1. Brief provided to Chief of Defence Force to make his decision on whether or not to close the child care centre at RAAF Bases Williamtown and Darwin;

   2. Protocols and procedures for dealing with aircraft crashes at RAAF Bases Williamtown and Darwin; and

   3. Noise abatement policies relevant to Exercise Pitch Black 2016. Excluding duplicates and the personal details of Defence officers, such as names, signatures and mobile telephone numbers."

Background


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. Group Captain Wallis identified three documents as matching the description of your request. Documents in the form approved for release are at Enclosure 1.
Decision

6. Group Captain Wallis decided to:

   a. partially release one document for Item 1 with deletions made in accordance with section 42 [documents subject to legal professional privilege] and section 47F [public interest conditional exemptions-personal privacy] of the FOI Act; and

   b. partially release two documents for Item 2 with deletions made in accordance with section 47G [public interest conditional exemptions - business] and/or section 47E(d) [public interest conditional exemptions – certain operations of agencies] of the FOI Act.

7. Item 3 was not considered as part of the request because it is publicly available from the following website: http://www.defence.gov.au/AircraftNoise/Darwin/noisemitigation.asp.

Material taken into account

8. In making her decision, she 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. the response from a third party as a result of consultation.

Reasons for decision

Section 22(1) - irrelevant matter

9. Upon examination of the documents, Group Captain Wallis found that some documents contained material regarding matters that do not relate to the scope of the request such as names, signatures and mobiles of Defence officials. Group Captain Wallis considered that the material would disclose information that would be reasonably regarded as irrelevant to the scope of the request. As such, in accordance with subparagraph 22(1)(a)(ii) of the FOI Act, Group Captain Wallis decided to remove or redact this material.

Section 47F - personal information

10. Upon examination of the documents, Group Captain Wallis identified the name and position of a person other than you. Group Captain Wallis considered the disclosure of this information would constitute an unreasonable disclosure of personal information of another person.

11. 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, Group Captain 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.

12. Against those criteria, Group Captain Wallis found that:

a. the specific personal information is not well known;

b. the person to whom the information relates is 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 individual would reasonably be expected not to have disclosed to a third party without their consent.

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

Section 42 - legal professional privilege

14. Upon examination of Item 1, Group Captain Wallis noted that the document contained information from specialist technical reports obtained to inform legal advice. Group Captain Wallis considered the disclosure of this material would constitute a disclosure of legal adviser-client information and exempt from disclosure on that basis.

15. Paragraphs 5.117 to 5.118 of the Guidelines state:

... The underlying policy basis for Legal Professional Privilege (LPP) is to promote the full and frank disclosure between a lawyer and client to the benefit of the effective administration of justice. It is the purpose of the communication that is determinative. The information in a document is relevant and may assist in determining the purpose of the communication, but the information in itself is not determinative.

At common law, determining whether a communication is privileged requires a consideration of:

- whether there is a legal adviser-client relationship,
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation,
- whether the advice given is independent, and
• whether the advice given is confidential.

16. Taking into account the above requirements of the Guidelines, Group Captain Wallis found that LPP does exist in this instance and as a result have redacted all information pertaining to LPP.

Section 47G - business information

17. Where access has been denied to information under section 47G of the FOI Act, Group Captain Wallis considered that the material could reasonably be expected to have a substantial adverse effect on the business affairs of the company providing information relevant to emergency processes and procedures.

18. As noted in section 47G, 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 emergency processes and procedures.

19. Group Captain Wallis was satisfied that the expected effect of disclosing material identified exempt under section 47G could have an adverse effect on the company providing that information as it could potentially provide you with details of the processes and procedures involved in responding to airfield emergencies and their ability to subsequently re-establish viable airfield operations.

20. In light of the above, Group Captain Wallis decided that the specified material identified is in fact conditionally exempt pursuant to subsection 47G of the FOI Act.

Section 47E – certain operations of agencies

21. The two identified documents for Item 2 detail the procedures for providing emergency responses at RAAF Base Williamtown and the Darwin International Airport. The release of this information has the potential to compromise the effective response to emergencies and the subsequent re-establishment of effective airfield operations as it outlines Defence’s emergency response capability and procedures, which could be used to undermine these responses.

Public interest – section 47F, 47G and 47E(d).

22. Group Captain Wallis found that the identified documents are conditionally exempt under sections 47F, 47G and 47E of the FOI Act. Section 11A (5) provides that, if a document is conditionally exempt, it must be disclosed ‘unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest’.

23. Group Captain Wallis considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and release of this information may increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).
24. Paragraph 6.29 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors Group Captain Wallis found particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

   a. the protection of an individual’s right to privacy;

   b. security, law enforcement, public health or public safety;

   c. the competitive commercial activities of an agency (in this case Darwin International Airport); and

   d. the management function of an agency (Paragraph 6.29(a)).

25. Release of an individual’s name not known to have been associated with the matters dealt with in the documents would prejudice the protection of that individual’s right to privacy and would not increase public scrutiny of Defence activities.

26. While Group Captain Wallis recognised that releasing how Defence would respond to an aircraft crash at RAAF Base Darwin and RAAF Base Williamtown could increase public scrutiny of Defence response in these situations, release of Defence responses could be used to undermine those responses, which in turn could affect not only the operations of Defence, but also public safety in the event of an aircraft crash.

27. Finally releasing details of Darwin Airport’s emergency plan provides commercial information on Darwin International Airport Authority’s obligations and responsibilities and could negatively impact on the Airport Authority’s ability to respond following emergency, which in turn would impact on the Authority’s commercial interests.

28. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making Group Captain Wallis’ decision.

**Payment of Charges**

29. Upon completion of your request, the processing was calculated to be the same as the original estimate. As you have already paid the charges in full, there are no further charges associated with your request.

**FOI Disclosure Log**

30. 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

31. 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

32. 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

33. 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

34. 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

35. Contact details for the Information Commissioner are above.
36. Should you have any questions in regard to this matter please contact this office.

Yours sincerely

Mrs Michelle Rueckert
Assistant Director
Freedom of Information

24 February 2016

Enclosure:
1. Documents in the form for release