



Australian Government
Department of Defence
Defence Support and Reform Group

Ministerial and Information
Management Branch
Department of Defence

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Our reference: [REDACTED]

By email: [REDACTED]

Dear [REDACTED]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 22 October 2014, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

“Correspondence between the Department to a staff member in the Office of the Minister for Defence seeking and providing permission to use images from the Australian Defence Image Library on the Minister’s Facebook page or for other reasons;”

Background

2. The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

3. Ms Andrea Sansom, Acting Director, FOI is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

4. Ms Sansom identified one document, being an email, as matching the description of your request.

Decision

5. Following examination of the document Ms Sansom decided to partially release the identified 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 conditionally exempt under section 47F [public interest conditional exemptions – personal privacy] of the FOI Act. A copy of the document in the form for release is at Enclosure 1.

Material taken into account

6. In making her decision, Ms Sansom had regard to:
- a. the terms of the FOI request;
 - b. the content of the document in issue;
 - c. relevant provisions in the FOI Act,
 - d. Defence guidance material on the FOI Act and the *guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the guidelines)

Reasons for Decision

Section 47F of the FOI Act

7. Upon examination of the documents Ms Sansom found that the identified document contained the mobile phone number and names of staff from the office of Minister Johnston. Ms Sansom considered this material meets the definition of personal information as contained in section 4 of the FOI Act. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, she 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.*
- c. *the availability of the information from publicly accessible sources.*

8. Against these three criteria, Ms Sansom found that:

- a. *the specific pieces of personal information relating to the individuals are not well known to the general public.*
- b. *the persons to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the document.*
- c. *this specific information is not readily available from publicly accessible sources.*

9. Noting the above findings, Ms Sansom decided that disclosure of the specific information would be an unreasonable disclosure of personal information belonging to other individuals. Accordingly, she considered that the material is conditionally exempt under section 47F of the FOI Act.

10. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

Public interest consideration – Section 47F

11. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Ms Sansom considered the range of factors that favour access to a document set out in section 11B(3) of the FOI Act.

12. 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.*
- (d) allow a person to access his or her own personal information’.*

13. Ms Sansom noted 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.

14. Ms Sansom also noted that this specific information does not have an effect on the promotion or the effective oversight of public expenditure, nor would it allow a person to access his or her own personal information.

15. In coming to her decision, Ms Sansom also considered subsection 11B(4) [public interest exemptions – 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 she took into account were listed under subsection 11B(4) of the FOI Act.

16. Accordingly, Ms Sansom considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents that match the scope of the request. Therefore, she decided that it would be contrary to the public interest to release the information considered exempt, under subsection 47F(1) of the FOI Act.

Clarifying information

17. It is legitimate and normal practice for images on the Australian Defence Image Gallery to be reproduced under the copyright conditions stated on Defence’s website. It is accepted that these images might appear on sites that contain or have URL links to party political content. However, it is inappropriate for the images themselves to be appropriated purely for party political purposes.

18. On occasion, Defence photographers take images of politicians who undertake official engagements held at Defence facilities or which involve Defence personnel and equipment. Recent examples include the Minister for Defence meeting ADF members on operations, the Leader of the Opposition addressing Royal Australian Air Force personnel – as the Prime Minister looked on – before their departure to the Middle East, and parliamentarians participating in the ADF Parliamentary Program. Many politicians include such images on their social media sites. Defence does not have an issue with this practice.

Rights of review

19. 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

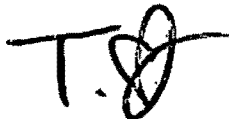
20. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence will publish the identified documents relating to this request within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions. Accordingly, this request will be published on Defence's FOI Disclosure Log on 28 November 2014.

Further advice

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

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

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

21 November 2014

Enclosures:

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