

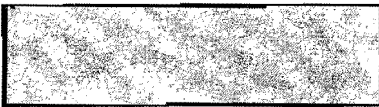


Australian Government
Department of Defence
Defence Support and Reform Group

Ministerial and Information
Management Branch
Department of Defence

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Our reference: FOI 127/14/15



By email: 

Dear 

References

- A. Request from  dated 26 October 2014
- B. Email Ms Andrea Sansom to  dated 30 October 2014 – Preliminary assessment of charges
- C. Copy of FOI Deposit received on 22 November 2014
- D. Email Mrs Melissa Davidson to  dated 1 December 2014 – FOI charges imposed
- E. Email  to Mrs Melissa Davidson dated 8 December 2014 – Extension to statutory deadline agreed

1. Reference A sought access, under the *Freedom of Information Act 1982* (FOI Act), to:

“any and all training materials which focus on teaching the detection, monitoring, tracking, identification and reporting of "Contacts of Interest", "Tracks of Interest", "Unknowns" and unidentified aircraft which would be picked up by systems operated by 41 Wing (ie: the JORN Coordination Center/IRSU and/or Regional Coordination Centre/3CRU and No. 114MCRU). Furthermore, and in relation to the above, I am looking to grasp how and what persons taking the course are taught in relation to Australia's Recognised Air Picture, Air Battle Management Operations and Situational Awareness - Any material that mainly focuses on 'unidentified' bodies as mentioned above.”

Background

2. Reference B provided you with an estimate of FOI charges for the processing of your request. We received your receipt confirming payment of the required deposit against the estimated charges at Reference C, and the charges were imposed at Reference D.

3. At Reference E you kindly agreed to a 30-day extension of the statutory deadline under section 15AA [Extension of time with agreement] of the FOI Act.
4. The 30-day statutory period for processing your request commenced on 26 October 2014, but was suspended when we dispatched Reference B, and recommenced when we received Reference C. Therefore, the statutory deadline was due to expire on 18 December 2014, however, following receipt of Reference E it now expires on 17 January 2015.
5. 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

6. Wing Commander (WGCDR) C M Taylor, Staff Officer - Legal, Air Force Headquarters, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Identified documents

7. WGCDR Taylor identified 15 documents as matching your request. The details of the documents are listed in the schedule of documents at Enclosure 1.

Decision

8. Following examination of the documents, WGCDR Taylor decided to:
 - a. release 13 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 that the material is considered exempt under subsection 47E(d) [Public interest conditional exemptions - certain operations of agencies] of the FOI Act; and
 - b. release two documents in full.

Material taken into account

9. In making his decision, WGCDR Taylor 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. paragraph 6.29 the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. principles on open public sector information issued by the Information Commissioner.

Exemption claim – section 47E(d) of the FOI Act

10. 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...

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

12. 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 present and future aircrafts processes and procedures.

13. WGCDR Taylor was satisfied that the expected effect of disclosing to you the 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 (ie published on the FOI Disclosure Log) it could be used by individuals to circumvent our detection procedures and enter or leave Australian Sovereign Territory airspace without clearance or detection. Additionally release of the material would provide insight into Air Force surveillance capability and potentially allow operations to be compromised.

14. In light of the above, WGCDR Taylor decided that specified material identified in the schedule is in fact conditionally exempt pursuant to subsection 47E(d) of the FOI Act.

15. 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.

Rights of access – section 11A

16. 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.

17. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, WGCDCR Taylor considered the range of factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring accessing] of the FOI Act. WGCDCR Taylor 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.

18. While WGCDCR Taylor noted that the release of this material would be of some interest to you, it would not inform public debate on any matter of public importance in any meaningful way. Additionally, disclosure of the information would not promote oversight of public expenditure, nor allow you access to your own personal information.

19. In coming to the above decision, WGCDCR Taylor 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. WGCDCR Taylor advised that none of the factors he took into account were listed under subsection 11B(4) of the FOI Act.

20. Accordingly, WGCDCR Taylor considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, he 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

21. 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 C.

22. 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.

23. 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.

FOI Disclosure Log

24. 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

25. 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

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

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

Yours sincerely



Andrea Sansom
Acting Director
Freedom of Information

6 January 2015

Enclosures:

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