



Our reference: FOI 131/13/14

[Redacted]

By email: [Redacted]

Dear [Redacted]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email of 1 October 2013, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to documents broadly related to Singleton Army Camp specifically:

“ITEM 1 - An asbestos register for the Camp created in 2007;

ITEM 2 - Any asbestos registers created for the Camp between 1986 and 2007;

ITEM 3 - Contracts and/or documents which relate to any building, renovation or demolition work that took place at the camp during the period 1960 to 1970 and;

ITEM 4 - A copy of the whole base contamination assessment completed in late 2012 by the Directorate of Environmental Remediation Program, and all reports produced as a result of that assessment which address the existence of asbestos at the base.

2. By email on 3 October 2013, I advised you that the scope of Item 3 & 4 totalled approximately 2191 pages and that a FOI request of this size may attract a section 24 determination [Power to refuse request-diversion of resources]. On the same day you replied with the following revised scope:

ITEM 1 - An asbestos register for Singleton Army Camp created in 2007;

ITEM 2 - Any asbestos registers created for the Singleton Army Camp between 1986 and 2007;

ITEM 3 - A copy of the final Department of Defence, Singleton Military Area, NSW Stage 2 Environmental Investigation, dated 21 December 2012.

Background

3. On 3 October 2013 I wrote to you to advice of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. Your email agreeing to pay charges for the processing was received in this office on

the same date. As such, the statutory processing time for your request expires on 31 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. Mrs Sarah Brown, Director Environmental Remediation Programs, Defence Support & Reform Group, is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

6. Mrs Brown identified 3 documents as matching the description of your request. A schedule of documents is at Enclosure 1. Documents in the form for release are at Enclosure 2.

Decision

7. Following examination of the documents Mrs Brown decided to:
- a. partially release 2 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 deleted material is conditionally exempt under section 47F [Public interest conditional exemptions – personal privacy] of the FOI Act,
 - b. refuse access to 1 document of the request 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, and
 - c. release in full one document.

Material taken into account

- a. In making her decision, Mrs Brown had regard to:
- b. the parameters of the request;
- c. the content of the documents in issue;
- d. the relevant provisions in the FOI Act;
- e. the Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (the Guidelines); and
- f. the Principles on Open Public Section Information issued by the Information Commissioner; and
- g. advice provided by officers within the department.

h.

Reasons for Decision - Section 24A(1) of the FOI Act – Documents do not exist

8. Mrs Brown has refused access to the document requested, under section 24A(1)(b)(ii) [documents do not exist] of the FOI Act. Section 24A(1) of the FOI Act states:

24A Requests may be refused if documents cannot be found, do not exist or have not been received

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.

9. 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.

10. Searches were undertaken with:

- a. Defence Support (DS) - Victoria and Tasmania, Defence Support and Reform Group DSRG), and
- b. DS – Northern New South Wales, DSRG.

11. Searches were undertaken of:

- a. Objective (Defence Records Management System)
- b. Lotus notes database, and
- c. Defence Archives.

12. Advice indicates that asbestos registers were not created until 2007 as part of a Defence wide asbestos audit.

13. In light of this, Mrs Brown can not grant access to the requested documents under section 24A(1)(b)(ii) of the FOI Act.

Reasons for decision – section 47F [personal privacy]

14. Upon examination of the documents, Mrs Brown found that they contain the names of people other than you. In accordance with subsection 47F(2), in determining whether the disclosure of the names, mobile telephone numbers and e-mail addresses would involve the unreasonable disclosure of personal information, Mrs Brown had regard to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is (or known to have been) associated with the matters dealt with in the documents; and
- c. the availability of the information from publicly accessible sources.

15. Against those three criteria, Mrs Brown found that:

- a. the specific pieces of personal information relating 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 documents; and
- c. this specific information is not readily available from publicly accessible sources.

16. Noting the findings against the above criteria, Mrs Brown 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, Mrs Brown decided that the disclosure of the names belonging to third parties, would involve the unreasonable disclosure of personal information. Accordingly, Mrs Brown considered the materiel to be conditional exempt under section 47F of the FOI Act.

Public interest considerations - section 11A(5)

17. Section 11A(5) of the FOI Act requires Defence to allow access to an exempt documents unless, in the circumstances, access to the documents would, on balance, be contrary to the public interest.

Public interest considerations - section 47F

18. In assessing whether disclosure is on balance, contrary to the public interest, Mrs Brown considered the range of factors set out in section 11B(3) [Public interest exemptions – factors] of the FOI Act, which favours access to a document. Mrs Brown noted that disclosure may promote some of the objects 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.

19. Mrs Brown also considered the following information provided in the Guidelines issued by the Office of the Australian Information Commissioner:

- a. *"6.138 Documents held by agencies or ministers often include personal information about public servants. For example, a document may include a*

public servant's name, work email address, position and title, contact details, decisions or opinions."; and

- b. *"6.139 Where public servants personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that public servant was performing their public duties. Such information may often also be publicly available, such on an agency website."*

20. While Mrs Brown noted that release of this material may be of some interest to you, Mrs Brown considered 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.

21. Disclosure of the information would not allow you further access to your own personal information. Furthermore, Mrs Brown considered that the protection of an individual's right to privacy far outweighs any public interest there may be in the release of this material.

22. In coming to the above decision, Mrs Brown also considered 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. None of the factors she took into account were listed under subsection 11B(4) of the FOI Act.

23. Accordingly, Mrs Brown 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.

24. Therefore, Mrs Brown decided that it would be contrary to the public interest to release the information considered conditionally exempt, under subsection 47F of the FOI Act.

Payment of Charges

25. In our letter, dated 3 October 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 3 October 2013, an invoice for the preliminary assessment deposit of [REDACTED] was subsequently sent directly from Defence Finance.

26. 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 you have already paid.

27. Accordingly you are required to pay the remaining [REDACTED] in order to finalise your request. Please find attached at Enclosure 3 an invoice for the balance. Details about payment of the invoice are on the form.

Rights of review

28. 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 4.

FOI Disclosure Log

29. 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

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

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

Yours sincerely



Andrea Sansom
Assistant Director
Freedom of Information

24 October 2013

Enclosures:

1. Schedule of documents
2. Documents in the form for release
3. Freedom of Information Invoice for balance of charges
4. Fact Sheet: Freedom of Information – Your Review Rights