



**Australian Government**  
**Department of Defence**

Ministerial and Executive Coordination and Communication Division

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MECC/OUT/2016/022  
Our reference: FOI 143/15/16

8 February 2016

[REDACTED]

[REDACTED]

Dear [REDACTED]

**Application for internal review**

1. I refer to your email application of 8 January 2016, in which you sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act) of the decision by Group Captain Cath Wallis, Director of Corporate and Community Relations – Air Force, on 8 January 2016, to partially release a document to you.

2. In your email dated 8 January 2016, you advised:

*'I wish to seek internal review of this decision.*

*Mr Turnbull is charging the taxpayer for the food and drink served aboard his private jet. The Australian people deserve to know what he is spending money on and whether his choices are extravagant. Is he eating truffles and caviar or weetbix and toast like the rest of us? Nothing that is published that you referred to about the costs will tell the people this.*

*Expenditure of public money by politicians is in the public interest. We have a right to know.*

*Also, Tony Abbott and Kevin Rudd were happy to give this information out - what is so special about Malcolm Turnbull? Why is he above the rules? Or are his preferences so extravagant that he has something to hide?*

*<http://www.defence.gov.au/FOI/Docs/Disclosures>*

3. The purpose of this letter is to provide you with a fresh decision relating to the document that is the subject of your application for internal review under the FOI Act.

## Background

4. By email on 10 November 2015, you requested access to a document under the FOI Act, specifically:

*'... the 34 Squadron catering profile for Malcolm Bligh Turnbull and his spouse Lucinda Mary Turnbull...'*

5. On 16 November 2015, Mrs Theresa Stinson, Assistant Director – FOI, acknowledged your email and advised that the statutory deadline for you to receive your decision expired on 10 December 2015.

## Consultation under section 27A [Consultation – documents affecting personal privacy]

6. By email dated 23 November 2015, Mrs Stinson notified you that there was a requirement to consult with third parties under section 27A of the FOI Act. As part of the consultation process, the third parties objected to the release of their personal information.

7. You received a decision on 8 January 2016.

## Reviewing Officer

8. I am authorised to make this decision under arrangements approved by the Secretary for Defence under section 23 of the FOI Act.

## Summary of Decision

9. I have decided to refuse access to the document under section 37(1)(c) [Documents affecting enforcement of law and protection of public safety] and section 47F [Public interest conditional exemptions – personal privacy] of the FOI Act.

## Material taken into account

10. In arriving at my decision, I had regard to:

- a. Group Captain Wallis' decision of 8 January 2016;
- b. the content of the document captured by the application for internal review;
- c. your email of 8 January 2016 and your contentions as set out in your application for internal review;
- d. objections raised as a result of the consultation process in which the third parties objected to the release of their personal information;
- e. the relevant provisions of the FOI Act;
- f. the *Guidelines issued by the Australian Information Commissioner under section 93A of the Freedom of Information Act 1982* ('the Guidelines'); and
- g. subsection 54C(3) [Internal review – decision on internal review] of the FOI Act, which states that I *'must make a fresh decision on behalf of the agency'*.

### Findings and reasons for the decision

11. In making my decision, I found that the document contains material that is considered exempt under subparagraph 37(1)(c) and section 47F of the FOI Act for the reasons set out below.

#### Under subparagraph 37(1)(c) [Documents affecting enforcement of law and protection of public safety]

12. Subparagraph 37(1)(c) of the FOI Act states:

*'(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*

*(c) endanger the life or physical safety of any person.'*

13. The Guidelines note the following with regard to subparagraph 37(1)(c):

*Under s 37(1)(c) a document is exempt if its disclosure would, or could reasonably be expected to, make a person a potential target of violence by another individual or group. That is, whether release of the documents could be expected to create the risk, not whether the documents reflect an existing credible threat. This exemption requires a reasonable apprehension of danger which will turn on the facts of each particular case.*

14. In this case, I found information contained in the document relates specifically to food allergies of a third party. I consider that, if this information were released, it could reasonably be expected to endanger the life or physical safety of that individual. Therefore I concluded that this information is exempt from release under subparagraph 37(1)(c) of the FOI Act.

#### Under section 47F [Public interest conditional exemptions – personal privacy]

15. In making my decision, I considered the application of the public interest conditional exemptions. As required by the FOI Act, I also considered the objectives of the FOI Act, together with the public interest factors both in favour and against disclosure of the document captured by your application for internal review.

16. Subsection 47F(1) of the FOI Act states: *'A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).'*

17. *'Personal information'* is defined in section 4 of the FOI Act as *'information or an opinion about an identified individual, or an individual who is reasonably identifiable'*

*(a) whether the information or opinion is true or not; and*

*(b) whether the information or opinion is recorded in a material form or not'.*

18. I found information contained in the document, such as names, catering preferences and food allergies, was personal information that would reasonably identify an individual and therefore satisfies the definition of *'personal information'* in section 4 of the FOI Act.

19. The test of *'unreasonableness'* implies a need to balance the public interest in disclosure of government-held information and the private interest in protecting the privacy of

individuals. I found, for the reasons set out below, that the disclosure of the above mentioned 'personal information' would be considered to be unreasonable.

20. The Guidelines note that *'the personal privacy exemption is designed to prevent the 'unreasonable' invasion of third parties' privacy'*. 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, I 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; and
- d. any other matters that the agency considers relevant.

21. Against those criteria, I found that:

- a. the specific personal information is not well known; and
- b. the specific personal information is not readily available from publicly accessible sources.

22. Moreover, I consulted once again with the third parties who were adamant that the release of their personal information was unreasonable.

23. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

#### **Public interest considerations – section 47F**

24. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines provided by the Information Commissioner, together with a range of factors that favour access to a document set out in subsection 11B(3) [public interest exemptions – factors favouring access] of the FOI Act, and factors against disclosure as set out in the Information Commissioner's Guidelines (see paragraph 6.29).

25. Disclosure of the specific personal information may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, while release of the specific personal preferences of the third parties may be of interest to you, it would not in my view inform public debate on any matter of public importance in any meaningful way, nor would disclosure of the information promote oversight of public expenditure.

26. I found that release of any of the personal information in the document could reasonably be expected to harm the interests of the individuals concerned, particularly in relation to details of allergies. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh your right to access that material.

27. I therefore concluded that the disclosure of the personal information would be contrary to the public interest. As such, I have exempted it accordingly under subsection 47F(1) of the FOI Act.

**Rights of review**

28. The FOI Act provides for rights of review of decisions. Should you be dissatisfied with my decision you have the right to seek review. Please find attached a copy of the fact sheet 'Freedom of Information - Your Review Rights' setting out your rights of review at Enclosure 1.

28. If you have any questions in relation to this matter, please contact me.

Yours sincerely

A large black rectangular redaction box covers the signature area.

Tony Corcoran PSM

**Enclosure:**

1. Rights of Review