



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 144/14/15

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

1. I refer to your email of 5 November 2014, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to documents relating to RAAF 41 Wing Publications.

Revised scope

2. On 10 November 2014, you were advised that your request was at risk of being refused under section 24 [unreasonable diversion of resources] of the FOI Act.

3. Accordingly, on 24 November 2014, you revised the scope of your request as seeking access to:

"RAAF 41 Wing "Standing Instruction (Operations) 3-19 Contact Of Interest Reporting Process"

RAAF 41 Wing "Standing Instruction (Operations) 3-15 Unauthorised Aircraft Movements Reporting and Investigation Process"

I wish to ask for the following material, related directly to the above listed material:

1. Any "Contact(s) Of Interest" (COI) reports or events, as laid out in RAAF 41 Wing "Standing Instruction (Operations) 3-19 Contact Of Interest Reporting Process", which remained unsolved or unknown.

2. Any "Unlawful Aircraft Movement" (UAM) reports, as laid out in RAAF 41 Wing "Standing Instruction (Operations) 3-15 Unauthorised Aircraft Movements Reporting and Investigation Process", which have been released to the below listed areas, where the track/report has gone unsolved or unknown.

- a. Headquarters Air Command (AOC Watchkeeper).*
- b. HQ NORCOM (J3S).*
- c. Coastwatch (Watch keeper).*

- d. *AST JIC (Watchkeeper).*
- e. *1RSU (OPSO).*
- f. *3CRU (OPSO). And*
- g. *114MCRU (OPSO).*

NOTE: Essentially, I am looking for the events where (aside from being reported, recorded and logged) RAAF 41 Wing has tracked a contact which was either out-of-place, went unsolved upon investigation, or behaved in an unusual manner. I wish for this information to be restricted to the month of July, 2014; ie 31 days worth of material..”

Background

4. On 28 November 2014, I advised you of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. Your receipt confirming payment of the processing charges was received in this office on 27 January 2015. As such, the statutory processing time for your request expires on 19 February 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. Group Captain (GPCAPT) C Wallis, Director of 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

7. GPCAPT Wallis identified one document as matching the description of your request. Documents in the form approved for release are at Enclosure 1.

Decision

8. GPCAPT Wallis has decided to partially release the document with deletions made in accordance with subsection 22(1) [Access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is considered exempt under section 47E [public interest conditional exemptions-certain operations of agency] of the FOI Act.

Material taken into account

9. In making her decision, GPCAPT Wallis had regard to:

- a. the terms of the request;
- b. the content of the identified document in issue;
- c. relevant provisions in the FOI Act; and
- d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).*

Exemption claim – Section 47E of the FOI Act

10. Upon examination of the document, GPCAPT Wallis identified information relating to the conduct of operations within units and elements of No 41 Wing. GPCAPT Wallis considered the disclosure of this material might reasonably have a substantial adverse effect on the proper and efficient conduct of the operations of this agency.

11. GPCAPT Wallis advised that she took into account the expected effect of disclosing the material considered exempt under section 47E. GPCAPT Wallis advised that if released, the material would or could reasonably be expected to cause damage to the operations of the Commonwealth as the data refers to real operational performance and outputs. She was of the view that that once the information was made publically available (ie published on the FOI Disclosure Log) it could be used by individuals to circumvent Defence's detection procedures and enter or leave Australian Sovereign Territory airspace without clearance or detection.

12. GPCAPT Wallis also took into account the Guidelines issued by the Australian Information Commissioner, noting that the predicted effect must bear on the agency's 'proper and efficient' operations; that is, the agency is undertaking its expected activities in an expected manner. Defence has in place best practices and procedures to ensure its airspace is properly monitored to ensure the security of the Commonwealth.

13. After considering the above factors, GPCAPT Wallis decided that disclosure of this information would constitute an unreasonable disclosure of aspects of operations of an agency. Accordingly, GPCAPT Wallis considered this material to be conditionally exempt under section 47E of the FOI Act.

Rights of access – section 11A

14. 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.

Public Interest considerations – Section 47E of the FOI Act

15. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, GPCAPT Wallis considered the guidelines provided by the Australian Information Commissioner, together with a range of factors that favour access to a document as set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

16. GPCAPT Wallis considered the public interest in promoting the objects of the FOI Act have been satisfied and did not believe the release of certain information specific to the conduct of operations within a unit would inform public debate on any matter of public importance in a meaningful way. Additionally, disclosure of this information would not promote oversight of public expenditure or allow a person to access his or her own personal information.

17. In coming to the above decision, GPCAPT Wallis also considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act. Accordingly, GPCAPT Wallis was satisfied that on balance the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document.

Declassification of documents

18. The document matching the scope of this request was classified. The decision maker has declassified the version of the document that is approved for release.

Payment of Charges

19. In our letter dated 28 November 2014, 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 28 November 2014, an invoice for the preliminary assessment deposit of [REDACTED] was subsequently sent directly from Defence Finance.

20. 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. However, on this occasion, I have decided to waive the remaining charges. As such, there are no further charges associated with this request.

Rights of review

21. 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 2.

FOI Disclosure Log

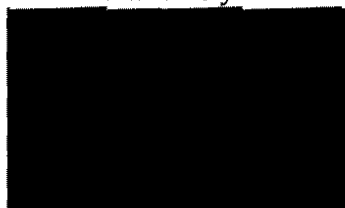
22. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

Further information

23. The FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2014C00673>

24. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Melissa Davidson
Assistant Director
Freedom of Information

16 February 2015

Enclosures:

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