



Our reference: FOI 154/14/15



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 13 November 2014, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

- CDF Directive no 17/2008* **[Item 1]**
- CDF Directive no 9/2006* **[Item 2]**
- CDF Directive no 21/2013* **[Item 3]**
- CDF Directive 'The establishment of the ADF Investigative Service'* **[Item 4]**
- Service Police Manual Volume 2, Section 3, Chapter 3* **[Item 5]**
- Security Forces Implementation Team update 1- 7* **[Item 6]**
- OC395ECSW Message to SECFOR Personnel 3/7/13* **[Item 7]**
- OC395ECSW Message to all SECFOR Personnel June 2013* **[Item 8]**
- Proposed AFPOL Career Progression* **[Item 9]**
- SECPOL Reform Questions* **[Item 10]**
- Airforce Police Employment Profile, including annexes and addendums* **[Item 11]**
- Naval Police Coxswain Workforce Review Implementation Plan 27/8/13* **[Item 12]**
- ADF Alignment of Service Police Capability July 2010* **[Item 13]**
- ADFIS technical development program* **[Item 14]**
- Address to ADFIS Conference by Air Chief Marshal Angus Houston 15/6/09* **[Item 15]**
- Any redress of grievance application made to the Provost Marshal since May 2013 from any member of SECPOL/Airforce Police and any correspondence sent in response.* **[Item 16]**

Background

2. On 28 November 2014, I wrote to advise you of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. Your deposit towards the processing charges was paid on 4 December 2014 and the FOI processing timeframe was restarted. As such, the statutory processing time for your request was due to expire on 19 December 2014.

3. I sought an extension, in accordance with section 15AA of the FOI Act, to the FOI processing timeframe. By email, dated 5 December 2015, you agreed to the requested extension and the due date was amended to 18 January 2015.

4. I note that the above mentioned due date was a Sunday, in accordance with the FOI Guidelines issued by the Australian Information Commissioner, if the last day for notifying a decision falls on a Saturday, Sunday or a public holiday, the timeframe will expire on the first day following which is none of those days. As such, the due date for you to receive a response expires today [19 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 makers

6. As your request covered documents held by a number of areas, the following accredited decision makers were appointed:

Items 1 – 4 & Item 12 – Commander Geoffrey Fiedler RAN, Deputy Director, Navy Ministerials and Coordination;

Item 5 & Items 13 – 16 – Group Captain AC Roberts, CSM, Provost Marshal Australian Defence Force; and

Items 6 – 11 – Wing Commander CM Taylor, Staff Officer Legal, Air Force.

Documents identified

7. Commander Fiedler identified three documents as matching the scope of Items 1 – 4 and one document as matching the scope of Item 12 of your request.

8. Group Captain Roberts identified 38 documents as matching the scope of Item 5 & Items 13 – 16 of your request.

9. Wing Commander Taylor identified seven documents as matching Items 6 – 11 of your request. Wing Commander Taylor advised that Item 11 contained three documents and he found that Item 9 of your request is a duplicate of Item 11 of your request.

10. A schedule of documents relating to the entire request is at Enclosure 1.

Material taken into account

11. In making their decisions the decision makers had regard, as appropriate, to:

- a. the terms of the request;
- b. the content of the identified documents in issue;
- c. relevant provisions in the FOI Act;
- d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
- e. the Principles on open public sector information issued by the Information Commissioner; and
- f. advice from the Office of the Chief of the Defence Force.

Item 1 – Decision

12. Commander Fiedler found that the document that matched the scope of Item 1 of your request listed four Enclosures. Commander Fielder noted that Enclosures 1 and 2 to Item 1 are publicly available at http://www.defence.gov.au/mjs/docs/mji_government_response_4oct052.pdf and <http://www.defence.gov.au/publications/spauditreportresponse.pdf> respectively. Enclosure 3 to Item 1 is CDF Directive 07/2007 which is addressed at Item 4 of your request.

13. Taking the above into account Commander Fielder decided to partially release the documents matching the scope of Item 1 of your request with deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 47F of the FOI Act.

Item 1 & Item 12 – Reasons

Section 47F of the FOI Act

14. Section 47F(1) of the FOI Act provides:

that a document is conditionally exempt if ‘disclosure under this Act would involve the unreasonable disclosure of personal information about any person’.

15. In making his decision Commander Fiedler considered whether:

- a. the document contained personal information;
- b. the disclosure of the personal information would be unreasonable; and
- c. whether the disclosure of this information would, at this time, be contrary to public interest.

Personal information

16. Commander Fiedler found that the document at Enclosure 4 to Item 1 and the document identified as matching the scope of Item 12 of your request contained personnel identification numbers (PMKeys) and personal signatures of persons other than you.

17. As a person’s identity is apparent or reasonably ascertainable from the deleted information, Commander Fiedler decided that the material constituted personal information.

Unreasonable to disclose

18. In determining whether release of the above personal information is unreasonable, Commander Fiedler took into account, inter alia:

- a. the extent to which the information is well known: and
- b. the availability of the information from publicly accessible sources.

19. Against those criteria, Commander Fiedler found:

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

Public interest considerations

20. In determining whether the documents, Commander Fiedler considered the Guidelines by the Australian Information Commissioner, together with a range of factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. Commander Fiedler had regard to whether giving access to you at this time would, on balance, be contrary to the public interest. Specifically, Commander Fiedler considered if disclosure of the document would:

- a. promote the objects of the FOI Act;
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure;
- d. allow a person to access her or his personal information.

21. In reviewing the request, Commander Fiedler decided that releasing the requested documents may promote some of the objects of the FOI Act.

22. Regarding the deletions made in accordance with section 47F of the FOI Act; there is a public interest in protecting the privacy of individuals whose personal details appear in documents. Given the nature of this information, Commander Fiedler decided that it would not inform debate on a matter of public importance, now would the release of the documents promote effective oversight of public expenditure or prevent a persons access to his or her own personal information.

Item 2 – Decision

23. Commander Fiedler was advised that extensive searches were undertaken by both the previous and current Staff Officer (Admin) to the Chief of the Defence Force (CDF) as well as the Director of Operations, Australian Defence Force Investigative Service (ADFIS) for the document that matches the scope of Item 2 of the request. Commander Fiedler was advised that the document was a CDF Interim Directive and that the subject of the Directive was instruction to the Provost Marshal of the ADF (COL T.A.Grutzner). Commander Fiedler was also advised that it was signed on May 2006; however a copy of the document could not be located in the record holdings of the Office of the CDF or within the office of the Director of Operations ADFIS.

24. Taking the above into consideration, Commander Fiedler decided to refuse access to the requested document under section 24A(1) of the FOI Act, as notwithstanding thorough searches, the document could not be found.

Item 3 & 4 – Decision

25. Commander Fiedler identified the documents as matching the scope of Items 3 and 4 of your request. He decided to release both documents intact.

Items 5, 13 & 14 - Decision

Section 47E of the FOI Act

26. Section 47E of the FOI Act conditionally exempts documents where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain listed agency operations.

27. After reviewing the documents that match the scope of Items 5, 13 & 14 Group Captain Roberts found that the entire documents that meet the scope of Items 5 and Item 13, and some of the document that meets the scope of Item 14, contained specific information relating to certain methods of operations being undertaken between agencies. Disclosure of this information would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency. Group Captain Roberts considered the material is conditionally exempt under subsection 47E(d) of the FOI Act.

Public interest considerations

28. Group Captain Roberts considered, as required, section 11A and 11B in regards to the release of this specific material. He considered that disclosure of the documents promotes the objectives of the FOI Act by allowing access to government information in some form. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny of Defence activities.

29. While Group Captain Roberts acknowledged that the material may be of some interest to you, it would not inform public debate on any matter of public importance in any meaningful way. Group Captain Roberts considered that the investigation process is necessarily conducted within strict confidentiality boundaries. He considered that the public interest in protecting people involved in this process would far outweigh any public interest in the release of the material.

30. Accordingly, Group Captain Roberts considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the identified documents. Therefore, Group Captain Roberts found that it would be contrary to the public interest to release the specific information under section 47E(d) of the FOI Act.

Item 15 - Decision

31. Group Captain Roberts has identified one document as matching the scope of Item 15 of your request, which he has decided to release intact.

Item 16 - Decision

Section 37 of the FOI Act

32. After examination of the 34 documents that form Item 16 of your request, Group Captain Roberts found that they contained material which, if disclosed, could reasonably be expected to prejudice the conduct of an investigation of a possible breach of the law and therefore he considered that the material would be exempt under section 37(1)(a) of the FOI Act.

33. Subsection 37(1)(a) of the FOI Act relevantly provides:

“A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(a) prejudice the conduct of an investigation of a breach, or possible breach of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance.”

34. Paragraph 5.77 of the Guidelines state that this section only applies:

“to documents only where there is a current or pending investigation and release of the documents would, or could reasonably be expected to, prejudice the conduct of that investigation. Because of the phrase ‘in particular instance’, it is not sufficient that prejudice will occur to other or future investigation: it must relate to the particular investigation at hand. In other words, the exemption does not apply if the prejudice is about investigations in general.

35. In forming his decision, Group Captain Roberts considered paragraph 5.74 of the Guidelines and that the documents *“in question should have a connection with the criminal law or the processes of upholding or enforcing civil law or administering a law. This is not confined to court action or court processes, but extends to the work of agencies in administering legislative schemes and requirements, monitoring compliance, and investigating breaches. The exemption does not depend on the nature of the document or the purpose for which it was brought into existence”*.

36. Group Captain Roberts was satisfied that the documents that form Item 16 relate to a current investigation which is continuing. The release of this information could impact on the direction of the investigation and pre-emptively release material that may be used as evidence by the investigation body which would jeopardise the investigation.

Section 47C of the FOI Act

37. Group Captain Roberts further advised, in relation to Item 16, that it had been identified that the redress has been enquired into however subsequent action is still continuing, therefore, the information is conditionally exempt under section 47C of the FOI Act as the matter is still under deliberation status.

Public interest considerations

38. A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature or, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency.

39. In forming his decision, Group Captain Roberts considered paragraph 6.62 of the Guidelines and that the deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

40. Whilst Group Captain Roberts acknowledged that the material may be of some interest to you, it would not inform public debate on any matter of public importance in any meaningful way; Group Captain Roberts considered that the investigation process is necessarily conducted within strict confidentiality boundaries. In this case, as the matter is continuing it would be unreasonable to disclose the material. Group Captain Roberts considered that the public interest in protecting people involved in this process would far outweigh any public interest in the release of the material.

Section 47F of the FOI Act

41. Upon examination of the documents, Group Captain Roberts found that some of the attached documents contained personal information being the names of ADF personnel, and signatures belonging to persons other than you. 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, Group Captain Roberts 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.

42. Against these three criteria, Group Captain Roberts 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.

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

44. 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

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

46. 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.'*

47. Group Captain Roberts 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 specific information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

48. While Group Captain Roberts noted 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 would it allow a person to access his or her own personal information.

49. In coming to his decision, Group Captain Roberts 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 he took into account were listed under subsection 11B(4) of the FOI Act.

50. Accordingly, Group Captain Roberts 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, Group Captain Roberts decided that it would be contrary to the public interest to release the information considered exempt, under subsection 47F(1) of the FOI Act.

Section 22 of the FOI Act

51. Where Group Captain Roberts decided to deny access to documents, he was required to consider whether the documents could be released with the exempt material deleted in accordance with section 22(1) of the FOI Act. He found that the documents that met the scope of Items 5, 13 and 16 could not be edited to remove the exempt material, however the remaining documents were edited and copies have been prepared in a form where the exempt material has been removed.

Items 6 – 11 – Decision and reasons

Section 47F of the FOI Act

52. Upon examination of the documents identified as matching Items 6 – 11 of your request, Wing Commander Taylor identified signatures and mobile telephone numbers of persons other than you. He considered that disclosure of the information would constitute an unreasonable disclosure of personal information of a person or persons other than you.

53. The Guidelines note that *'the personal privacy exemption is designed to prevent 'unreasonable' invasion of third parties privacy'*. In accordance with subsection 47F(2), in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Wing Commander Taylor 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 document
- c. the availability of the information from publicly accessible sources.

54. Against those criteria, Wing Commander Taylor found that:

- a. the specific personal information is not well known
- b. the people to whom the information relates are not known to have been associated with the matters dealt with in the documents
- c. the personal information is not readily available from publicly available sources.

Rights of Access

55. 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 states (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

56. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Wing Commander Taylor considered the Guidelines, together with a range of factors that favour access to a document as set out in section 11B(3) of the FOI Act.

57. Wing Commander Taylor considered the public interest in promoting the objects of the FOI Act have been satisfied and he did not believe that the release of the signatures and mobile telephone numbers would inform public debate on any matter of public importance in a meaningful way. Additionally, disclosure of this information does not promote oversight of public expenditure or allow you access to your own personal information.

58. In coming to the above decision, Wing Commander Taylor also considered subsection 11B(4) of the FOI Act. Accordingly, he was satisfied that on balance the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents.

Section 24A(1) of the FOI Act

59. Section 24A(1) of the FOI Act states:

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

Documents 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.

60. 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.

61. Wing Commander Taylor advised that the Deputy Director Security Forces Implementation Team confirmed via email that no SECPOL Reform Questions have ever been drafted by his team or have ever existed.

62. Taking the above into account, Wing Commander Taylor was satisfied that 'all reasonable steps' had been taken to locate the document. He was satisfied that the documents cannot be found or does not exist and decided to refuse access to Item 10 under section 24A(1) of the FOI Act.

Payment of Charges

63. 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 and paid the required deposit on 4 December 2014.

64. Upon completion of your request, after deducting the free decision making time, the actual amount for processing exceeded the original estimate provided to you. However, as explained in the above mentioned letter the amount payable can only be more than the preliminary assessment if the decision is to release all of the documents requested in full. The remaining balance is the difference between actual charges and the deposit you have already paid.

65. Accordingly you are required to pay the remaining  in order to finalise your request. Please find attached at Enclosure 2 a Payment Authorisation Form for the balance. Once you have completed the form please return to foi@defence.gov.au.

Rights of review

66. 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 3.

FOI Disclosure Log

67. 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.

Further advice

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

69. Should you have any questions, please contact me.

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

19 January 2015

Enclosures:

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