



Our reference: FOI 167/14/15



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 2 December 2014, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“...a copy of the joint Commonwealth-ADF submission to the Defence Force Remuneration Tribunal in the course of its recent hearing on the Defence Workplace Remuneration Agreement 2014-2017. The document is listed at reference (v) in the footnotes to the Tribunal's decision of 3 November 2014 on this Agreement.”

Background

2. By letter, dated 4 December 2014, you were advised of the preliminary assessment of FOI charges associated with your request. On 9 December 2014, you sought waiver of the charges on public interest grounds.

3. By letter dated 8 January 2015, you were advised that the charges had been waived on grounds other than public interest. By email dated 9 January 2015 you advised that you wished to proceed with your request. The statutory deadline was 6 February 2015.

4. On 5 February 2015 I sought an extension, in accordance with section 15AA of the FOI Act, to the deadline. You kindly agreed to the extension on the same day. The revised due date for a response to be provided on your request was 13 February 2015.

5. The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

6. Ms Andrea Sansom, Acting Director FOI, was the authorised officer pursuant to section 23 [decisions to be made by authorised person] of the FOI Act to make a decision on this FOI request.

Documents identified

7. Ms Sansom identified one document, being a 138 page report titled “2014 Workplace Remuneration Arrangement – Matter No 9 of 2014 – Joint Submission – 15 October 2014”, which matched the scope of your request.

Decision

8. Ms Sansom decided to partially release the identified document 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 considered exempt under section 33 [documents affecting national security, defence or international relations] of the FOI Act. Her reasons are set out below.

Material taken into account

9. In making her decision Ms Sansom had regard to:
- a. the content of the identified document in issue;
 - b. relevant provisions in the FOI Act;
 - c. Defence guidance material on the FOI Act and the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the guidelines); and
 - d. advice from People Policy & Employment Conditions & the Office of the Vice Chief of the Defence Force whose duties relate to the matters referred to in the document.

Section 33 of the FOI Act

10. Ms Sansom decided to exempt the document from release, in part, pursuant to subsection 33(a)(ii) of the FOI Act. Section 33 of the FOI Act relevantly provides:

“A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:*
 - (i) the security of the Commonwealth;*
 - (ii) the defence of the Commonwealth....”*

11. Ms Sansom was satisfied that the relevant material is exempt under subparagraph 33(a)(ii) of the FOI Act because it is of a sensitive nature, and pertains to Australian Defence Force (ADF) operations, including procedures, as well as ADF incident response times and capabilities. Ms Sansom found that the identified document, specifically Annex C (paragraphs 21 – 25), contained information which is of a sensitive nature pertaining to ADF operations.

12. Ms Sansom considered that, if this information was to be released it would inform adversaries of the ADF's current and future capabilities, which could expose ADF members to unnecessary risk. Further, disclosure of the material could prejudice the effectiveness of the ADF to undertake military operations as required by Government.

13. In deciding that material was exempt under section 33 of the FOI Act, Ms Sansom also considered the mosaic effect: The Guidelines state that:

5.33 Normally when assessing the potential harm in releasing a document, a decision maker looks at the contents of the document in question. But when evaluating potential harmful effects of disclosing documents that affect Australia's national security, defence or international relations, decision makers may take into account the intelligence technique usually known as the 'mosaic theory'. This theory holds that individually harmless pieces of information, when combined with other pieces, can generate a composite – a mosaic – that can damage Australia's national security, defence or international relations. Therefore, decision makers may need to consider other sources of information when considering this exemption.

5.34 The mosaic theory does not relieve decision makers from evaluating whether there are real and substantial grounds for the expectation that the claimed effects will result from disclosure. It is a question of fact whether the disclosure of the information, alone or in conjunction with other material, could reasonably be expected to enable a person to ascertain the identity or existence of a confidential source. This is not always simple. For example, in Re Slater and Cox the evidence that persuaded the AAT of a 'mosaic effect' claim was an analysis of 22 thirty-five-year-old documents.

14. Ms Sansom was satisfied that the disclosure of the identified sections of the document would, or could reasonably be expected to, cause damage to the defence of the Commonwealth and that the material is therefore exempt under section 33(a)(ii) of the FOI Act.

Further information

15. Please note there are inconsistencies in the original page numbering which is in bold on the top right of the pages. Page 79 is incorrectly titled as page 75 and resets the page numbering, also there is a renumbering of page 113 marked as page 108. Further, Annex C was a classified document that was stored separately to the main document, identified with a one page place saver. Annex C, in its declassified form, has now been inserted into the document immediately following the place saver.

16. On examination of the document I found that the table at Annex E contained 'black boxes' which could be misconstrued as FOI redactions. I can confirm that the 'black boxes' are part of the original document and indicate where there was no information to complete the table.

17. Finally, for your ease I have added the FOI number and a page number for the complete document in the top right hand corner of the document.

18. The document in the form approved for release is at Enclosure 1.

Rights of review

19. 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

20. 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. This request will be published on 20 February 2015.

Further information

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

22. 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



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

13 February 2015

Enclosures:

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