



Our reference: FOI 168/14/15

[Redacted]

By email: [Redacted]

Dear [Redacted]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your letter, dated 24 November 2014, which we received on 2 December 2014, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“a. A detailed breakdown of all official hospitality undertaken by the Minister for Defence Senator the Hon David Johnston and the Minister for Defence Personnel the Hon Stuart Robert or their offices between September 1 and November 20, 2014. This includes all receipts and a breakdown of all food and alcohol expenses. This includes all meals paid for by the Department of Defence and whether or not prior approval was sought for such expenditure.

b. Details on the number of people present at any meals or hospitality functions including ministerial staff, departmental staff and guests including their role and the company they represented.

c. Full details of all international travel undertaken by the ministers during the same period including details of all flights and class of travel for the ministers and their staff.

d. Full details of any official gifts received by the ministers and their staff during this period.”

Background

2. On 6 February 2015, you kindly agreed to an extension, in accordance with section 15AA of the FOI Act, to the processing timeframe. The revised due date being 13 February 2015.
3. 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

4. Ms Andrea Sansom, Acting Director, FOI was the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

5. Ms Sansom identified 10 documents as matching the description of your request. A schedule of documents is at Enclosure 1.

Decision

6. Following examination of the documents Ms Sansom decided to;
 - a. refuse access under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act to Item C and part of Item D, and
 - b. partially release 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] or, subparagraph 33(a)(iii) [documents affecting international relations] of the FOI Act.

Material taken into account

7. Ms Sansom had regard to:
 - a. the terms of your request;
 - b. contents of the documents in scope;
 - c. relevant provisions in the FOI Act;
 - d. the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act; and
 - e. advice received from Defence officials.

Reasons for Decision

Section 24A [Do not exist]

8. No documents could be located as matching the scope of Item C of your request, all documents relating to Ministerial travel is managed by the Department of Finance. No documents could be located for Item D in respect to the then Minister for Defence and his staff.

9. 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.

10. 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.

11. Ms Sansom consulted with the area in that would be responsible for providing support to the Ministers, who confirmed that all travel for Ministers and their staff is managed by the Department of Finance.

12. The office of the Minister for Defence was requested to provide a copy of the relevant page(s) of the gift register for the Minister and his staff. The office advised that they did not have any documents that meet the scope of the request.

Subsection 33(a)(iii) – Documents affecting international relations

13. Where access has been denied under section 33 of the FOI Act, Ms Sansom considered that the material would, or could reasonably be expected to, harm the national security, defence and/or international relations of the Commonwealth.

14. In applying this exemption, Ms Sansom considered the likelihood of damage occurring as a result of release of the material she considered to be exempt under section 33. In regards to the terms 'could reasonably be expected to' and 'damage', the Guidelines provide:

5.13 *The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of the documents.*

5.14 *The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.*

5.25 *‘Damage’ for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage was likely to result from disclosure of the document(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments...*

15. Subsection 33(a)(iii) exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

16. The FOI guidelines state that ‘the phrase ‘international relations’ has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them’.

17. Further, the guidelines state that ‘... the phrase does encompass intangible damage, *such as loss of trust and confidence in the Australian Government...*’.

18. Ms Sansom advised that information has been identified within the document that would encourage an inappropriate comparison of the value of small gifts traditionally presented to counterparts and guests, if disclosed, and could diminish the positive working relationship between Australia and other Governments.

19. Ms Sansom was satisfied that the document contains information that could reasonably be expected to damage the international relations of the Commonwealth and deemed that the information is exempt under section 33(a)(iii) of the FOI Act.

Section 47F [Personal Privacy]

20. Upon examination of the documents, Ms Sansom identified information, specifically, signatures, personal information and personal identification numbers belonging to people other than you. This material satisfies the definition of personal information in section 4 of the FOI Act. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, Ms Sansom 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; and
- c. the availability of the information from publicly accessible sources.

21. Against those criteria, Ms Sansom found that:

- a. the specific personal information is not well known to the general community;
- b. the person 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. the specific information is not readily available from publicly accessible sources.

22. Noting the findings against the above criteria, Ms Sansom decided that the disclosure of this information would constitute an unreasonable disclosure of personal information belonging to a person other than you. Accordingly, she considered this material to be conditionally exempt under section 47F of the FOI Act.

23. 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 considerations – section 47F

24. Ms Sansom noted that conditionally exempt documents carry a public interest test. She considered section 11B of the FOI Act which sets out factors favouring access and irrelevant factors when considering the public interest test.

25. 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; and*
- (d) allow a person to access his or her own personal information.*

26. Ms Sansom considered that the public interest in promoting the objects of the Act had been satisfied as, in her opinion, merely removing signatures, personal information and personal identification numbers from the document does not detract from public disclosure of government-held information.

27. Ms Sansom did not consider that the final consideration was relevant in this instance as the information does not relate to your own personal information.

28. Taking all of the above into consideration, on balance, Ms Sansom considered that disclosure of the signatures, personal information and personal identification numbers, would be contrary to the public interest.

29. In coming to the above decision, Ms Sansom also had regard to 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.

30. Accordingly, Ms Sansom considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents that match the scope of this request. Therefore, she decided that it would be contrary to the public interest to release the information considered exempt under section 47F of the FOI Act.

Payment of Charges

31. In our letter, dated 8 December 2014, after deducting the free decision making time, the department estimated the cost associated with processing your request to be [REDACTED]. You paid the required deposit towards the processing of your request on 12 January 2015.

32. Upon completion of your request, and on this occasion, I have decided to cap the charges payable at the deposit amount already paid.

33. Accordingly, copies of the documents in the form approved for release are at Enclosure 2.

Rights of review

34. 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

35. 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. This request will be published on Defence's FOI Disclosure Log on 13 February 2015.

Further advice

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

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

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

13 February 2015

Enclosures:

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