



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 196/13/14



By email: [redacted]

Dear [redacted]

1. I refer to your two emails, dated 19 November 2013, addressed to the FOI Coordinator, Department of Finance seeking access, under the *Freedom of Information Act 1982* (FOI Act), to documents relating to VIP flight requests. On 25 November 2013, the Department of Finance sought to formally transfer your requests, in accordance with section 16 of the FOI Act, to Defence as the subject matter of the requested documents is more closely connected with the functions of this agency. Defence accepted transfer of both requests on the same day.

2. In accordance with section 24(2)(b) of the FOI Act, your requests have been registered as one request as the original requests relate to documents, the subject matter of which is substantially the same.

3. Your request was registered in Defence as FOI 196/13/14 with the following scope:

... documents produced in the period 25 June 2013 to September 7 2013 relating to requests outlining Kevin Rudd and Therese Rein's requests for preferred meals and any other specific requests with regard to RAAF VIP flights. That is, any items that they required be made available on flights such as drinks, food or suggested menus and special requests.

[Item 1]

...documents produced in the period 25 June 2013 to November 7 2013 relating to requests outlining Tony Abbott and Margie Abbott's requests for preferred meals and any other specific requests with regard to RAAF VIP flights. That is, any items that they required be made available on flights such as drinks, food or suggested menus and special requests.

[Item 2]

Background

4. On 26 November 2013, I wrote to you to advise of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. Your email agreeing to pay charges for the processing was received in this office on the following day, noting that you were not required to pay a deposit towards the processing charges at that time. As such, the statutory processing time for your request was restarted and the due date was to expire on 20 December 2013.

5. On 17 December 2013, I informed you that the decision maker had determined that there was a requirement to consult with third parties under section 27A [Consultation – documents affecting personal privacy] of the FOI Act, before finalising the decision. As such, in accordance with section 15(6) [extension of processing period to comply with requirement of section 26A, 27 or 27A] of the FOI Act, the statutory timeframe was extended to 19 January 2014.

6. I further advised that as 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 on 20 January 2014.

7. 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

8. Mr Tony Corcoran, Assistant Secretary, Ministerial and Information Management, is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

9. Mr Corcoran identified two documents, being 34 Squadron Catering Profiles, as matching each item of your request.

Decision

10. In regards to Item 1, Mr Corcoran decided to release one document with material deleted, 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 exempt under section 47F [public interest conditional exemptions – personal privacy] of the FOI Act.

11. Mr Corcoran decided to release the document relating to Item 2 with some material removed which he considered to be irrelevant to the scope of your request. The material has been removed in accordance with section 22(1)(a)(ii) of the FOI Act; Mr Corcoran decided to release the remainder of the document intact.

Material taken into account

12. In making his decision Mr Corcoran had regard to:

- a. the terms of your request;
- b. the content of the identified documents in issue;
- c. relevant provisions in the FOI Act;
- d. 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
- e. third party responses to formal consultation.

Reasons for decision

13. Upon examination of the documents, Mr Corcoran found that they contained personal information including identifying information and personal information relating to food and drink preferences. He was satisfied that this material constitutes personal information.

14. Before addressing the exemption further, Mr Corcoran decided to consult with the persons whose personal information was contained in the documents, as he considered that they may wish to reasonably make a contention that the disclosure of the information is exempt under section 47F of the FOI Act.

15. Mr Corcoran noted that the document identified as matching Item 2 of the request does not contain any information relating to the third party's spouse. As addressed in paragraph 11 above, the document contained some material that he considered to be irrelevant to the scope of the request, which he decided to remove in accordance with section 22 of the FOI Act. There were no objections to the disclosure of the remainder of the document.

16. In relation to the document that matches the scope of Item 1, the third party objected to the disclosure of the personal information on the grounds that the document contained information which related to their health and medical condition. After considering this matter, Mr Corcoran came to the conclusion that the release of the material contained in the document would not be an unreasonable disclosure of the third party's personal information.

17. In coming to his decision, Mr Corcoran took into account the third party's position in office when this document was prepared and that the costs associated with the use of the VIP aircraft are borne by taxpayers. Mr Corcoran did not consider that the document contained any information that would be considered to be health or medical information. The document is clearly labelled as a catering profile, including likes and dislikes. After discussing the matter with an officer from 34 Squadron he was satisfied that this is the usual process for all officials using the aircraft. He was also informed that if an official had a requirement for particular meal choices for medical reasons, for instance an allergy, that it would be clearly identified on the document. Finally, Mr Corcoran considered whether the link provided in the document would reveal any connection with a particular health concern, and he was satisfied that it does not. For these reasons Mr Corcoran decided not to accept the third party's objections and decided to disclose the material.

18. Mr Corcoran noted that another third party's likes and dislikes have been included in the document identified as matching Item 1; however, he was of the view that the disclosure of that personal information in this context would be unreasonable. He took into account that the third party was not an elected official, the use of the VIP aircraft was limited, and further, would have been only when accompanying an elected official.

19. In addressing the exemption relating to personal privacy, Mr Corcoran was required to consider the following:

- 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 matter dealt with in the documents;
- c. the availability of the information from publicly accessible sources; and
- d. any other matter the agency or Minister considers relevant.

20. Against these criteria, Mr Corcoran found:

- a. while he acknowledged that this information may be known to certain elements, he was satisfied that it is not well known to the general community;
- b. again, he acknowledged the third party is known to have been associated with the VIP Squadron aircrafts, however, he did consider the specific personal information is generally known;
- c. he was satisfied that the specific personal information is not readily available from public sources.

21. Taking the above into account, Mr Corcoran considered that the identified material is conditionally exempt under section 47F of the FOI Act.

Section 47F – public interest considerations

22. 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 a 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.

23. Mr Corcoran considered section 11B of the FOI Act which sets out factors favouring access and irrelevant factors when considering the public interest test.

24. Subsection 11B(3) of the FOI Act sets out 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 the 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.

25. Mr Corcoran considers that the public interest in promoting the objects of the FOI Act has been satisfied by assessing this case on its merits and in accordance with the guidance on good decision making principles. He did not believe that the release of this personal information would inform public debate on any matter of public importance in a meaningful way, he appreciated that the use of the VIP aircraft is taxpayer funded, however, he did not consider that the likes and/or dislikes of the users of the aircraft had any effect on the costs associated with such use. Mr Corcoran noted that the costs associated with the use of the aircraft are tabled in parliament and the identified documents do not add any valuable information to that process.

26. Finally, Mr Corcoran took into account the guidelines which discuss other factors considered to be relevant, in particular he considered paragraph 6.132 which states *whether it would shed light on the workings of government*. Further, at 6.133 the guidelines state *'...if the information disclosure were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed...disclosure would be unreasonable*.

27. Accordingly, after taking all of the above into consideration Mr Corcoran was satisfied that on balance the public factors against disclosure outweigh the factors for disclosure of the specific exempt material contained in the document matching Item 1 of the request.

Third party

28. Taking into account Mr Corcoran's decision not to accept one of the third party's objections, in accordance with subsection 27A(5) [decision to give access] of the FOI Act, I am required to advise the third party of Mr Corcoran's decision.

29. This Department is prevented by paragraph 27A(6) [access not to be given until review or appeal opportunities have run out] of the FOI Act from providing the documents to you until it becomes apparent that the third party does not propose to exercise their right to seek review of the decision. The third party has until **17 February 2014** to appeal the decision. Accordingly, I will write to you after this date to inform you of the outcome.

30. I will provide you with your rights of review when it becomes apparent whether the third party wishes to appeal or accept Mr Corcoran's decision. I will also provide you with details of any outstanding charges associated with your request.

Further advice

31. The FOI Act may be accessed online at: <http://www.comlaw.gov.au/Details/C2011C00803> .
32. Should you have any questions, please contact this office.

Yours sincerely



Theresa Stinson
Assistant Director - Media Case Management
Freedom of Information