



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 201/13/14

By email [REDACTED]

Dear [REDACTED]

1. I refer to your email of 25 November 2013, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

"All documents relating to the cull of kangaroos on Swan Island between 1 March 2013 and 31 June 2013."

Revised scope

2. On 26 November 2013, our office provided the following interpretation of your scope:

" Documents relating to the cull of kangaroos on Swan Island created between 1 Mar 13 and 30 Jun 13.

Item 1 - Inter-departmental correspondence regarding kangaroo management at Swan Island

Item 2 - Internal Defence correspondence regarding kangaroo management at Swan Island

Item 3 - Coordinating instructions for Swan Island kangaroo management

Item 4 - Post activity reports for Swan Island kangaroo management

Item 5 - Media responses and communication strategies

Item 6 - Wildlife destruction permit issued by Department of Environment and Primary Industry to reduce the kangaroo population at Swan Island Victoria."

3. By email on 27 November 2013, you were happy to confirm the scope of these documents but if the shooters records are not included in these documents that you would like copies of the shooters records relating to the kangaroo cull that lists the number of kangaroos and joeys taken, the dates and times of the cull etc. Our office was provided advice that the information you require is contained within the documents listed.

Background

4. On 28 November 2013, our office provided you with a preliminary assessment of charges associated with processing your request. On 29 November 2013, you sought a waiver of these charges on financial hardship grounds. On 23 December 2013, our office advised you of Ms Andrea Sansom's, Acting Director Freedom of Information, decision to impose the

charges as detailed in our original preliminary assessment letter. You subsequently sought review of this decision on 24 January 2014. On 19 February 2014, Mr Tony Corcoran, Assistant Secretary, Ministerial and Information Management Branch decided to exercise his discretion and not impose the [REDACTED] of charges on this occasion.

5. On 11 March 2014, our office advised you that the statutory deadline for you to receive a response to your request was due to expire on 17 March 2014.

6. On 2 March 2014, our office informed you that the decision maker had determined that there was a requirement to consult with third parties under section 27 [Consultation – documents affecting business documents] 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 27] of the FOI Act, the statutory timeframe was amended to 16 April 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 Anthony Atkinson, Director - Corporate Information Governance, Defence Support Reform Group (DSRG) is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

9. Mr Atkinson identified 34 documents as matching the description of your request. A schedule of documents is at Enclosure 1. Documents in the form approved for release are at Enclosure 2. For ease of reference and for the purpose of processing this request, the decision maker has added an FOI Item number to each of the documents, which corresponds with the schedule.

Decision

10. Mr Atkinson has decided to:

- a. release in full 3 documents;
- b. partially release 29 documents 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 47F, 47E and 47G of the FOI Act; and
- c. deny access to two documents on the grounds that they are exempt under section 47E of the FOI Act.

Material taken into account

11. In making his decision, Mr Atkinson had regard to:

- a. the terms of the FOI request;
 - b. the content of the documents in issue;
 - c. relevant provisions in the FOI Act,
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- 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);
- e. comments provided by a third parties; and
- f. advice provided by the area whose duties relate to the requested documents.

Reasons for Decision

Section 47F – personal privacy

12. Upon examination of the documents, Mr Atkinson identified information, specifically, signatures, personal mobile telephone numbers, along with names of employees and email addressee's external to the department. 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, Mr Atkinson 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.

13. Against those criteria, Mr Atkinson 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.

14. Noting the findings against the above criteria, Mr Atkinson decided that disclosure of this information would constitute an unreasonable disclosure of personal information belonging to a person other than you and could cause stress to these individuals if this information were to be released. Accordingly, Mr Atkinson considered this material to be conditionally exempt under section 47F of the FOI Act.

15. 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 – personal privacy

15. When assessing whether the disclosure of the identified personal information is contrary to the public interest, Mr Atkinson considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors]. Mr Atkinson noted that none of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making his decision.

16. In relation to section 11B(3) [Promote the objects of this Act (including all the matters set out in sections 3 and 3A)] of the FOI Act, Mr Atkinson considered information held by the Government is a national resource and release of the personal information would promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act. However disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

17. Paragraph 6.29 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors Mr Atkinson found particularly relevant to your request are that disclosure of the documents:

- a. could reasonably be expected to prejudice the protection of an individual's right to privacy
- b. could reasonably be expected to impede the administration of justice for an individual;
- c. could reasonably be expected to prejudice an agency's ability to obtain confidential information;
- d. could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;
- e. could reasonably be expected to prejudice the management function of an agency; and
- f. could reasonably be expected to prejudice the agency's ability to maintain the confidentiality of material that has been obtained in the express or implied understanding that it be treated confidentially and not disseminated widely.

18. Based on the above, Mr Atkinson considered that on balance, the public interest factors against disclosure outweigh the factors for disclosure of the identified personal information. Therefore, decided that it would be contrary to the public interest to release information considered exempt under section 47F of the FOI Act.

Section 47E - certain operations of agencies

19. After examination of the documents that are the subject of your request, in Mr Atkinson's view, some of the documents contain material that if released, could have a substantial adverse effect on the proper and efficient conduct of the operations of the Department of Defence's Environmental Management Activities.

20. Section 47E(d) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

21. Mr Atkinson's found that the ability of Defence Support and Reform Group (DSRG) to maintain and foster working relationships with contracted companies is an essential function. Furthermore, DSRG's ability to obtain services from regional areas all over Australia, is essential to executing this function. Mr Atkinson also found that the details relating to how DSRG manages specific arrangements with companies relating to Environmental Management Activities including the emotive subject of kangaroo population management, should be treated confidentially to ensure that DSRG remains a model employer for a range of services delivered to the Department of Defence.

22. If the exempt material were to be released, DSRG's proper and efficient management of kangaroo control activities would be impaired as it would affect the ability in the future to discharge this function safely and in accordance with Authority to Control Wildlife Permits. This would have a substantial and adverse effect on the proper and efficient conduct of

DSRG's operations. Accordingly, Mr Atkinson found that this material to be exempt under section 47(E)(d).

Public interest conditional exemptions – certain operations of agencies

23. When assessing whether the disclosure of the identified information was contrary to the public interest, Mr Atkinson considered the factors that favour access to a document set out in section 11B(3) [Public interest exemptions – factors] of the FOI Act. In relation to section 11B(3) [Promote the objects of this Act (including all the matters set out in sections 3 and 3A)] of the FOI Act, Mr Atkinson noted that information held by the Government is a national resource and release of the information would promote the objects of the FOI Act. However disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

24. Mr Atkinson noted that paragraph 6.29 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors that were found particularly relevant to this request in relation to 47E(d) are that disclosure of the documents:

- a. could reasonably be expected to prejudice the competitive commercial activities of an agency;
- b. could reasonably be expected to prejudice the management function of an agency;
- c. could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
- d. could reasonably be expected to prejudice the agency's ability to obtain contractor services from enterprises in the future.

25. Based on the above, Mr Atkinson considered that on balance, the public interest factors against disclosure outweigh the factors for disclosure of the identified information. Therefore, decided that it would be contrary to the public interest to release information considered exempt under section 47E(d) of the FOI Act.

Section 47G Public Interest conditional exemptions – Business

26. Section 47G conditionally exempts a document if its disclosure under the FOI Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking.

27. Subsection 47G(1)(b) allows for conditional exemption if disclosure could reasonably be expected to prejudice the future supply of information to the Commonwealth.

28. Against this criteria, Mr Atkinson found that the disclosure of the redacted information would release confidential and sensitive business information that would prejudice the future supply of information to the Commonwealth. If the information is disclosed, this could lead to the Government not being able to provide best value for future services as businesses may not compete for contracts if there is a risk of disclosure of confidential and sensitive business information.

29. Accordingly, Mr Atkinson considered this material to be conditionally exempt under section 47G(1)(b) of the FOI Act.

30. Mr Atkinson considered that the disclosure of this information could allow a competitor or another person to determine the level of risk that the contractor is prepared to accept in providing services, and may be used against their commercial interests in other negotiations. Further, Mr Atkinson considered that whilst the contractor may be prepared to document this risk with the Commonwealth it may not wish for this information to be made publically available. As such, the inappropriate release of business affairs by the Commonwealth could have an adverse affect on the future ability of negotiations between both parties, and therefore, prejudice supply to the department. Therefore, Mr Atkinson considered that the information, if released, would adversely affect the contractor in respect of their lawful business and commercial affairs and is therefore considered conditionally exempt under section 47G of the FOI Act.

Public Interest Considerations – business information

31. Mr Atkinson considered the position of the third party, and formed the view that disclosure of their business information would directly impact on the extent, timing and profitability of the contractor, and further; it would also affect their ability to maintain a competitive advantage over their competitors. Mr Atkinson also considered that it is in the public interest that Defence does not disclose sensitive proprietary information of other companies or organisations, as this may not only adversely affect their lawful business and commercial affairs, but also affect their further dealings and prejudice supply to the department. In addition to the above, Mr Atkinson also considered the factors favouring access to a document as set out in subsection 11B (3) of the FOI Act.

32. Accordingly, Mr Atkinson considered that, on balance, the public interest factors against disclosure outweighed the factors for disclosure of the document that match the scope of the request. Therefore, decided that it would, be contrary to the public interest to release the information considered to be exempt, under paragraph 47G of the FOI Act.

Declassification of documents

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

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”, setting out your rights of review is at Enclosure 3.

FOI Disclosure Log

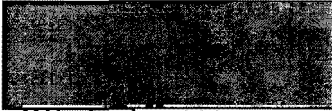
35. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision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

Further information

36. The FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2011C00803>.

37. 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



Bfée Fachrmann
Case Manager
Freedom of Information

16 April 2014

Enclosures:

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