




Our reference: FOI 202/13/14



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 27 November 2013, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

“the name of the person and/or organisation providing the security for the F-111 aircraft on loan from the RAAF/Defence now located at Evans Head Memorial Aerodrome, NSW. A brief summary of the type of security held and value would also be appreciated.”

2. Freedom of Information Directorate has interpreted your request as:

“Item 1 – A copy of the Evans Head Memorial Aerodrome Heritage Aviation Association Inc Deed of Guarantee and Indemnity; and

Item 2 – Any documents relating to the value.”

Background

3. On the 28 November 2013, in the Notification of preliminary assessment of charges letter, I advised you that there were no documents in existence for Item 2. Since this time, the area responsible for this documentation has located one document as matching the scope of Item 2. This document has been included in this request at no additional cost.

4. In the above mentioned letter, I advised you that the statutory processing time for the request was suspended on the 28 November 2013. Your letter agreeing to pay charges for the processing was received in this office on 29 November 2013. As such, the statutory processing time for your request expires on 28 December 2013.

5. On 6 December 2013, our office informed you that the decision maker had determined that there was a requirement to consult with third parties under section 27 [Consultation – 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 26A, 27 or 27A] of the FOI Act, the statutory timeframe was amended to 27 January 2014.

6. I note that the above mentioned due date is a public holiday, 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 28 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. Group Captain Catherine Wallis, Director Coordination Air Force, is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

9. Group Captain Wallis identified two documents as matching the description of your request.

Decision

10. Group Captain Wallis has decided to partially release both documents identified in response to your request with exempt matter removed under section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act and section 47F [public interest conditional exemptions – personal privacy] of the FOI Act.

Material taken into account

11. In making her decision Group Captain Wallis had regard to:

- a. the terms of the request;
- b. the content of the identified document 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) (specifically paragraph 6.29);
- e. the Principles on open public sector information issued by the Information Commissioner; and
- f. third party comments.

Reasons for decision

Exemption claim – Section 47F of the FOI Act

12. Upon examination of the documents, Group Captain Wallis identified signatures of persons other than you. Group Captain Wallis considered the disclosure of this material would constitute an unreasonable disclosure of personal information of a person other than you.

13. The Guidelines issued by the Australian Information Commissioner 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 disclosure of this information would involve the unreasonable disclosure of personal information, Group Captain Wallis 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.

14. Against those criteria, Group Captain Wallis 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;
- c. the specific personal information is not readily available from publicly accessible sources; and
- d. the material considered to be exempt is information that the individuals would reasonably be expected not to have disclosed to a third party without their consent.

Rights of access – section 11A

15. Subsection 11A(5) of the FOI Act, provides that the 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. Paragraphs 6.8-6.9 of the Guidelines state:

...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 – section 47F

16. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Group Captain Wallis considered the range of factors that favour access to a document set out in subsection 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. Group Captain Wallis noted that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, the disclosure of this information would not increase public participation in Government processes, nor would it increase scrutiny or discussion of Government activities.

17. Group Captain Wallis noted that the release of this material may be of some interest to you, however, it would not inform public debate on any matter of public importance in any meaningful way. Additionally, the deleted material would not allow you any further access to your own personal information.

Irrelevant factors – section 11B(4)

18. In coming to the above decision, Group Captain Wallis 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 Group Captain Wallis took into account were listed under subsection 11B(4) of the FOI Act.

19. Accordingly, Group Captain Wallis considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, Group Captain Wallis decided that it would be contrary to the public interest to release the information considered under subsection 47F of the FOI Act.

Consultation with third parties

20. As detailed in paragraph 5, the decision maker decided to consult with third parties regarding their business information which was contained in the documents, under section 27 of the FOI Act. In response to this consultation, some third parties have objected to the release of their information.

21. In accordance with subsection 27(6) [Notice of decision to give access] of the FOI Act, I am required to advise the third parties of Group Captain Wallis's decision.

22. This Department is prevented by paragraph 27(7) [Access not to be given until review or appeal opportunities have run out] of the FOI Act, from providing documents to you until it becomes apparent that the third parties do not propose to exercise their right to seek review of the decision. The third parties have until **14 February 2014** to appeal the decision. Accordingly, I will write to you after this date to inform you of the outcome.

Payment of Charges

23. In our letter, dated 28 November 2014, I advised you that 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 on 29 November 2013. Accordingly, you will be required to pay [REDACTED] to finalise your request. We will provide you with a Payment Authorisation Form to be completed when it becomes apparent that either the third party does not propose to exercise their right to seek review or the review process has been completed. .

Rights of review

24. 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 1.

FOI Disclosure Log

25. 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

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

Yours sincerely



Sally Philp
Assistant Director
Freedom of Information

15 January 2014

Enclosures:

1. Fact Sheet: Freedom of Information – Your Review Rights