




Our reference: FOI 205/14/15



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 18 December 2014, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

“documents and/or transcript under the Freedom of Information Act 1982 in regards to air traffic control records at Darwin Airport. The date in question is Thursday, December 11, 2014. (1) I would like the manifest of all charter planes (make, model, company) that left Darwin airport on December 11 up to 9am. (2) More importantly, I would like a transcript of the conversation between the pilot(s) of a Hardy Aviation charter plane and Darwin air traffic control that morning. If no conversation took place, ie the plane never took off, this should be evident in the manifest requested in (1). The flight was from Darwin NT to Jabiru NT but reportedly turned back to Darwin because of "mechanical issues". The flight, if it exists, left Darwin no later than 9am. This matter is of significant public importance.”

Revised scope

2. On 19 December 2014, you were advised that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of Defence from its other operations. This is called a ‘practical refusal reason’ (see section 24AA of the FOI Act). After further discussion with our office, on the same day, you agreed to proceed with the following revised scope:

“(1) A copy of the flight transcript of conversation and, should they exist, relevant data records as relating to mechanical issues and/or the reason why a Hardy Aviation charter flight turned back to Darwin Airport for Thursday 11 December 2014 for flight Darwin NT to Jabiru NT that departed Darwin Airport at approximately 0715h and landed at Darwin Airport at approximately 0740h.”

Background

3. On 19 December 2014, 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 letter agreeing to pay charges for the processing was received in this office on 20 January 2015. As such, the statutory processing time for your request expires on 27 February 2015.

4. 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

5. Group Captain Catherine Wallis, Director Corporate and Community Relations – Air Force was the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

6. Group Captain Wallis identified two documents as matching the description of your request. The titles of the documents are as follows:

Item 1 – Strips for VH-JVN 11 Dec 2014 (1 page); and

Item 2 – Transcript of recorded communications concerning Cessna Conquest Aircraft (7 pages).

Decision

7. Group Captain Wallis has decided to partially release the 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 considered exempt under section 47F [public interest conditional exemptions-personal privacy] of the FOI Act.

Material taken into account

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

- a. the terms of the request;
- b. the content of the identified documents 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); and
- e. the Principles on open public sector information issued by the Information Commissioner.

Reasons for decision

Section 47F of the FOI Act

9. 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.

10. The Guidelines 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 the 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 document;
- c. the availability of the information from publicly accessible sources; and
- d. any other matters that the agency considers relevant.

11. Against those criteria, Group Captain Wallis found that:

- a. the specific personal information is not well known;
- b. the people to whom the information relates are known to have been associated with the matters dealt with in the documents;
- c. the personal information is not readily available from publicly available 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

12. 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 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

13. 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.

14. 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 or promote oversight of public expenditure. Additionally, the deleted material would not allow you any further access to your own personal information.

Irrelevant factors – section 11B (4)

15. 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.

16. 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.

Payment of Charges

17. In our letter, dated 19 December 2014, 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 20 January 2015 an invoice for the preliminary assessment deposit of [REDACTED] was subsequently sent directly from Defence Finance.

18. Upon completion of your request, after deducting the free decision making time, the actual amount for processing was calculated to be [REDACTED]. Accordingly, on this occasion you are not required to pay any further charges for the processing of your request.

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” 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 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

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

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

Yours sincerely



Sally Philp
Assistant Director
Freedom of Information

5 February 2015

Enclosures:

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