



Australian Government
Department of Defence

Freedom of Information
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2610
Tel: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

Our reference: FOI 230/15/16



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your request of 8 February 2016 in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

I'm seeking access to correspondence such as emails, briefings and attachments received by:

Chief of Army

Vice Chief of Army

Chief of Navy

Vice Chief of Navy

Chief of Air Force

Vice Chief of Air Force

the Secretary and

ADFIS

since July 1 2015 in relation to:

1. David Morrision and Channel 7

2. David Morrision and Robert Ovadia

3. Jedi Council

4. Australian of the Year

Background

2. I also refer to your email advice of 9 March 2016 which clarified Item 4 of your request to exclude invitations and responses to invitations.
3. On 17 February 2016 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. You provided the receipt for your payment of the required deposit on 23 February 2016. As such, the statutory deadline for processing your request was 15 March 2016.
4. On 7 March 2016 you agreed to a 14 day extension of the FOI statutory deadline, in accordance with section 15AA of the FOI Act. On 22 March 2016, I sought to further extend the processing time to the allowable 30 days, you kindly agreed the extension on the same day. Accordingly, the due date for your request is 14 April 2016.
5. The purpose of this letter is to provide you with the decision relating your request.

FOI decision makers

6. As your request covers a number of areas, the accredited officers pursuant to section 23 of the FOI Act to make a decision on this FOI request are as follows:

Chief of Army & Vice Chief of Army – Colonel AJ Hocking, Deputy Chief of Staff,
Army Headquarters

Chief of Navy & Vice Chief of Navy – Commander GN Fiedler, RAN, Deputy
Director, Navy Ministerials and Coordination

Chief of Air Force & Vice Chief of Air Force – Group Captain CM Wallis, Director,
Corporate and Community Relations – Air Force

the Secretary & ADFIS – Ms Natalie Carpenter, Acting Director Information Access

Documents identified

7. Commander Fiedler identified one document as being relevant to Item 4 of the request and Ms Carpenter identified 10 documents as matching the scope of Item 3 of the request.

Decision

8. Commander Fiedler decided, after removing irrelevant material, to partially release the identified document to you, in accordance with section 22(1)(b) [access to edited copies with exempt of irrelevant matter deleted] of the FOI Act as the information is considered exempt under section 47F [public interest conditional exemptions – personal privacy] of the FOI Act.
9. Ms Carpenter decided, after removing irrelevant material, to release the identified documents to you intact.
10. Commander Fiedler and Ms Carpenter decided to refuse access to the remainder of the request under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

11. Colonel Hocking and Group Captain Wallis decided to refuse access to the entire request under section 24A of the FOI Act.

Material taken into account

12. In making their decisions, each decision maker had regard to:

- a. the terms of the request;
- b. the content of any identified documents;
- c. relevant provisions in the FOI Act; and
- d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
- e. advice from the offices of the Chief and Deputy Chief of the Army, the Chief and Deputy Chief of the Navy, the Chief and Deputy Chief of the Air Force, the office of the Secretary and the Provost Marshal – Australian Defence Force.

Reasons for decision

Section 22 – Irrelevant material

13. My letter to you dated 17 February 2016 outlined the department policy in regards to material we consider to be irrelevant to requests and which is therefore excluded. In line with that policy both Commander Fiedler and Ms Carpenter excluded the mobile phone numbers of Defence personnel found in the identified documents. Further to that, Commander Fiedler found that a large portion of the document he identified was also considered irrelevant and excluded as it merely contained the details of another officer forwarding the relevant document to him for consideration as part of this FOI request.

14. Ms Carpenter advised that a number of email read receipts in response to the identified documents were also contained in Objective; however, she considered those documents to be irrelevant to the scope of the request.

15. Ms Carpenter advised that ADFIS undertook searches of the Defence Policing and Security Management System and the ADFIS work group within the Defence electronic records management system (Objective) in which all emails and correspondence are stored. No other documents matching the scope of Items 1, 2 & 4 of the request could be found. She did not consider that wider searches were required taking into account the specific nature of the request.

Section 47F – personal privacy

16. Commander Fiedler found that document he identified contained the name and email address of a third party. As a person's identity was apparent or reasonably ascertainable from the information, he decided that it constituted personal information.

17. In determining whether release of the above personal information is unreasonable, Commander Fiedler took into account, inter alia:

- 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 within the document; and
- c. the availability of the information from publicly accessible sources.

Against those criteria, Commander Fiedler found:

- a. the deleted material is not well known;
- b. the person to whom the information relates if not widely known to be (or to have been) associated with the matters dealt with in the document; and
- c. the material is not available from publicly available sources.

18. In determining whether to release the document, Commander Fiedler considered the guidelines, together with a range of factors that favour access to the a document as set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. Commander Fiedler had regard to whether giving access to you at this time would, on balance, be contrary to the public interest. Specifically, he considered if disclosure would:

- a. promote the objects of the Act;
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure; and
- d. allow a person access to his or her personal information.

19. In reviewing the request, Commander Fiedler decided that released the requested document may promote some of the objects of the Act.

20. Commander Fiedler found that there is a public interest in protecting the privacy of individuals whose personal details appear in documents. This includes, inter alia, information of the nature described at paragraph 13 above. Accordingly, he found that the information would not inform debate on a matter of public importance, nor would its release promote effective oversight of public expenditure or prevent access to your own personal information.

21. Conversely, Commander Fiedler found that the release of the specific information could reasonably be expected to result in a decline in confidence in Defence's ability to maintain the privacy of its members and other third parties.

22. In deriving his decision, Commander Fiedler considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act. Commander Fiedler advised that none of the irrelevant factors were taken into account in making his decision.

23. After assessing all of the above, Commander Fiedler decided that the harm that could arise from the disclosure of personal information far outweighs any favourable public interest factors that could be gained from release.

Section 24A – documents do not exist

24. Group Captain Wallis advised that a search was conducted of the Air Force Headquarters electronic records management system (Objective) records using the search parameters as detailed at Item 1 -4 of your request. Ms Wallis advised that no documentation matching the scope of the request was found.

25. Group Captain Wallis advised that as the scope of the request sought access to documents specifically received by the Chief of the Air Force and the Deputy Chief of the Air Force she did not consider it necessary to undertake searches in any other areas in Defence. She was satisfied that ‘all reasonable steps’ had been taken to locate documents matching the scope of the request.

26. Colonel Hocking advised that the Military Assistant (MA) to the Chief of Army and the MA to the Deputy Chief of Army undertook key word searches of their principles email holdings using the following search parameters:

Subject and message text for:

- Ovadia
- Channel
- Jedi
- Morrison

Subject only:

- Australian & year
- David
- Dave
- Robert
- Council
- LTGEN

27. Colonel Hocking advised that the searches above undertaken for ‘subject only’ were done so due to too many false returns being identified when searching within the text as well as the subject.

28. Further to above, Colonel Hocking also advised that searches had been undertaken of the Army Headquarters Objective holdings and no documents could be found. He was satisfied that all reasonable searches had been undertaken.

29. In regards to documents relating to the office of the Secretary Ms Carpenter was advised by the Executive Officer in the office of the Secretary that searches were undertaken of the Secretary's emails and within working folders for the Secretary in Objective. The officer searched using the key words at 1 – 3 of the scope of your request.

30. A search using the keywords 'Australian of the Year' was also undertaken as outlined above, Ms Carpenter was advised that the search identified 69 emails. After further review however, it was determined that those documents did not meet the scope of the request as while they contained the word Australian, either in the subject or the content, they were all unrelated to 'Australian of the Year'. Ms Carpenter noted that the search did also result in emails associated with the Secretary's invitation and acceptance of the Australia Day reception; which you excluded from the scope of your request.

Payment of Charges

31. I have taken into account the time it took for each of the identified offices to undertake searches and on this occasion, I have decided to exercise my delegation and to cap the charges payable to the deposit amount already paid. Accordingly, please find at Enclosure 1 the documents in the form for release.

FOI Disclosure Log

32. 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. This request will be published on 21 April 2016.

Your Review Rights

Internal Review

33. Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. You must request a review, in writing, within 30 days of the date of this letter, or the date you receive the documents. Requests can be sent to:

Email: FOIRReview@defence.gov.au
 Fax: 02 626 62112
 Post: Freedom of Information Directorate - Reviews
 Department of Defence
 CP1-6-029
 PO Box 7910
 CANBERRA BC ACT 2610

Australian Information Commissioner

34. Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992
Fax: 02 9284 9666
Post: GPO Box 2999
Canberra ACT 2601

Complaints

35. You may complain to Defence, the Information Commissioner or the Commonwealth Ombudsman about an action taken by Defence in the exercise of its power or the performance of its functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Department of Defence, your complaint can be addressed to Mr Tony Corcoran using the contact details below:

Email: tony.corcoran@defence.gov.au
Post: Tony Corcoran
Assistant Secretary Information Management and Access Branch
CP1-6-14
PO Box 7911
CANBERRA BC ACT 2610

36. Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)
Fax: 02 6276 0123
Post: Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

37. Contact details for the Information Commissioner are above.

38. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Theresa Stinson
Assistant Director
Media & Sensitive Case Management
14 April 2016

Enclosure:

1. Documents in the form approved for release