



Our reference: FOI 240/14/15

[Redacted]

By email: [Redacted]

Dear [Redacted]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your revised request in respect to FOI 240/14/15, which sought access, under the *Freedom of Information Act 1982* (FOI Act), to:

Specifically, I am seeking access to briefings and correspondence since July 22, 2012, to September 22, 2012, to the Chief of Army, containing one or more of the following terms:

- a. Hastings Fredrickson*
- b. Jedi Council*
- c. Sexual Misconduct*
- d. Sexual assault allegation*
- e. NSW Police*
- f. [Redacted]*
- g. [Redacted]*
- h. [Redacted]*

Please include emails to or from the Chief of Army.

Please exclude duplicates, documents that have already been publicly released, media releases/statements/articles and correspondence with media.

Background

2. On 23 February 2015 I wrote to you to provide the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. On 24 February 2015, you advised that the required deposit had been paid. Accordingly the charges were formally imposed, the processing time was restarted and I advised that the due date for your request was 12 March 2015.
3. On 2 March 2015, I advised that the decision maker had determined that there was a requirement to consult with a third party under section 26A [Consultation – documents affecting Commonwealth-State relations etc.] 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 11 April 2015.
4. I note that the above mentioned due date is a Saturday. 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 is 13 April 2015.
5. I am pleased to provide this letter, which outlines the decision on your request, ahead of the statutory deadline.

FOI decision maker

6. Colonel WB Stothart, Deputy Chief of Staff, Army Headquarters (AHQ), was the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

7. Colonel Stothart identified three documents that fall within the scope of your request, specifically points a. and e.

Decision

8. Colonel Stothart decided to partially release the identified documents with deletions, 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.
9. Colonel Stothart also decided to refuse access to points b.-d. and f.-h. under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act, on the basis that the documents do not exist.
10. Colonel Stothart's reasons for this decision are set out below.

Material taken into account

11. Colonel Stothart 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 (OAIC) under section 93A of the FOI Act* (the Guidelines); and
 - e. advice received from the Office of the Chief of Army (OCA) and AHQ.

Reasons for decision

Section 22 of the FOI Act – Irrelevant material

12. Colonel Stothart advised that the identified documents each contained information relating to other incidents that do not fall within the scope of your request. He determined that the information is irrelevant and decided to remove it in accordance with section 22(1)(a)(ii) of the FOI Act.

Section 47F of the FOI Act – personal privacy

13. As advised above, Colonel Stothart identified three documents that match the scope of your request, specifically points a. and e. above. The documents have been identified as Serials 1-3.

14. Colonel Stothart advised that Serial 1 contained the name and personal information related to an allegation of a Defence member's inappropriate use of Defence's ICT systems.

15. To determine whether the disclosure of the personal information was unreasonable, Colonel Stothart had regard to the criteria specified in section 47F(2) of the FOI Act. Namely:

- 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 matter that the agency or Minister considers relevant.

16. In response to the above, Colonel Stothart found that specific personal information contained in Serial 1 is widely known and readily available from publicly accessible sources.

17. The incident mentioned above has been dealt with through New South Wales (NSW) Police initiating criminal proceedings against Mr Frederickson. The media have maintained an interest in this matter and it has been widely reported on. The information contained in the document is available in the public domain, and as such, Colonel Stothart considered the public interest to

release this information outweighs, in this case, the protection of the individual's personal information.

18. Serial 3 contained the name (albeit abbreviated) and rank of a Defence member which is unrelated to the matters that you are seeking information on.

19. To determine whether the disclosure of the identified personal information in Serial 3 was unreasonable, Colonel Stothart had regard to the criteria previously listed in paragraph 15 above.

20. In relation to Serial 3, Colonel Stothart considered that the release of the name and rank of this member would be an unreasonable disclosure of personal information and therefore conditionally exempt under section 47F(1) of the FOI Act.

Section 47F of the FOI Act – public interest considerations

21. Section 11A(5) of the FOI Act allows access to exempt documents unless, in the circumstances, access to the documents would, on balance, be contrary to the public interest.

22. In making his decision, Colonel Stothart had regard to paragraph 6.9 of the Guidelines which states:

“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.

23. Colonel Stothart considered a range of factors that favour access to the document, as set out in section 11B(3) of the FOI Act. Specifically, Colonel Stothart considered whether disclosure would:

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

24. Factors favouring disclosure in this case are that doing so may promote some of the objects of the FOI Act, as information held by the Government is a national resource. Disclosure in this case would not allow you access to your own personal information. Finally, the remaining factors are not relevant to this particular case.

25. Conversely, the release of this information could reasonably be expected to result in a decline in confidence in Defence's ability to maintain the privacy of its members.

26. In coming to his decision, Colonel Stothart also considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act.

27. After assessing all of those factors, Colonel Stothart decided that the harm that could arise from disclosure of the personal information far outweighs any favourable public interest factors that

would be gained from their release. Accordingly, Colonel Stothart considered the information to be exempt under section 47F of the FOI Act.

Section 24A(1) of the FOI Act

28. Colonel Stothart advised that no documents could be found that match the scope of items b. – d. and f. – h. of your request. Accordingly, access is refused under section 24A of the FOI Act.

29. Colonel Stothart advised that he consulted with the office of the Chief of Army which has conducted a thorough search of its electronic records management system known as 'Objective'. A search for documents containing the terms listed in your scope (and within the relevant timeframe) was conducted in the folder titled 'Email the Chief' and also the Chief of Army's correspondence register. No documents were located that match the scope of the request.

30. Colonel Stothart also consulted with AHQ, which has conducted Objective searches for any relevant documents with the relevant folder Chief of Staff (COFS) – AHQ. No documents were located that match the scope of this request.

31. Every reasonable avenue of locating documents has been exhausted to ensure that 'all reasonable steps' have been taken in relation to this request. All correspondence to the Chief of Army is staffed through the COFS – AHQ or entered on the correspondence register.

32. A thorough search was conducted and Colonel Stothart is satisfied that the documents do not exist.

Additional information

33. The CA has stated publicly, on numerous occasions, that he was first made aware of the so-called 'Jedi Council' in early April 2013. The ICT incident of 31 July 2012 was one of four incidents that the CA was notified about on 1 August 2012. The CA was not aware that this incident was anything but an isolated occurrence at the time of the reporting. It was not until April 2013, when briefed by the Australian Defence Force Investigative Service, that CA became aware of the extent of the offending behaviour.


Payment of Charges

34. Our aforementioned letter of 23 February 2015 advised that, after deducting the free decision making time, the department estimated the cost associated with processing your request to be [REDACTED].

35. Upon completion of your request, after deducting the free decision making time, the actual amount for processing was calculated to be [REDACTED]. This takes into account the numerous hours searching for documents that could not be located as well as the decision making process.

36. However, as explained in the above mentioned letter the amount payable can only be more than the preliminary assessment if the decision is to release all of the documents requested in full.

37. The remaining balance is the difference between the original estimate of [REDACTED] and the deposit you have already paid.

38. Accordingly, you are required to pay the remaining  in order to finalise your request. Please find attached at Enclosure 1 a Payment Authorisation Form for the balance. Once you have completed the form please return it to foi@defence.gov.au.

Rights of review

39. 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

40. 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

41. The FOI Act may be accessed online at: <http://www.comlaw.gov.au/Details/C2015C00013>.

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

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

10 April 2015

Enclosures:

1. Freedom of Information Payment Authorisation Form
2. Fact Sheet: Freedom of Information – Your Review Rights