



Australian Government
Department of Defence

Ministerial and Executive Coordination and Communication Division

Acting Assistant Secretary
Ministerial and
Information Management
CPI-6-14
Campbell Park Offices
Canberra ACT 2600
Tel: 02 626 64080
Fax: 02 626 62112

ASMIM/OUT/2014/054
FOI 279/13/14

August 2014

[REDACTED]

[REDACTED]

[REDACTED]

1. On 31 March 2014 the Department of Defence (Defence) made a decision on your request under the *Freedom of Information Act 1982* (Cth) (FOI Act) which, in its final form, sought access to:

'Statements taken from RAN officers, customs officers or crew personnel in relation to the burns allegations made by asylum seekers in January.'

2. On 16 May 2014 Defence was notified by the Office of the Australian Information Commissioner (OAIC) of an Information Commissioner (IC) review application you made in relation to this decision. On 25 June 2014 the OAIC advised Defence that the IC review would proceed.

3. The purpose of this letter is to make a revised decision in relation to this request under section 55G [Procedure in IC review – revocation or variation of access refusal decision] of the FOI Act.

Description of the documents

4. Upon review I found there are five documents relevant to your request. While the original decision identified nine records of conversation, on review only five of those records contain information connected with burns allegations. Each one comprises a record of conversation with a member of the Royal Australian Navy. Each one is a template document with eight questions, in which handwritten answers are recorded. The name and signature of the Navy personnel answering the questions in each case is also recorded.

Decision

5. I have decided to vary the decision under review in the following ways:

- a. I have decided to release questions 3, 5, 6 and 8 and the answers given to them on each record of conversation, to the extent that they relate to burns allegations, as well as a comment written above question 3 on Document 5;

- b. I have decided that questions 1, 2, 4 and 7 and the answers given to questions 1, 4 and 7 are irrelevant to your request. They do not relate to the burns allegations in any way. I have decided to delete that material in accordance with subparagraph 22(1)(a)(ii) [Access to edited with exempt or irrelevant matter deleted] of the FOI Act. I have decided to delete some answers, or parts of answers, to questions 3, 5, 6 and 8 on the same basis;
- c. I have decided to confirm the decision to refuse access to those parts of the records of conversation which record the suspected illegal entry vessel (SIEV) identification number under section 47E(d) [Public interest conditional exemptions – certain operations of agencies] of the FOI Act for the reasons expressed in the decision of 31 March 2014; and
- d. I have decided to exempt material identifying individuals, including Navy personnel, under subsection 47F(1) [Public interest conditional exemptions – personal privacy] of the FOI Act. A copy of section 47F of the FOI Act is at **Enclosure 1**.

6. Given the stage at which this matter is at, I do not propose to provide full reasons for those exemption decisions. It may be that you are prepared to withdraw your application on the basis of my revised decision. If not, my decision will be further explained in the course of providing submissions in support of it to the IC.

7. A copy of the documents as I have decided to release them, with deletions under subsection 22(1) of the FOI Act, are at **Enclosure 2**, noting that the charges were treated as having been paid in full as at 31 March 2014.

Contextual statement

8. The facts in relation to allegations of mistreatment have been established and assessed multiple times including in operational reporting and through a Quick Assessment. These assessments found that the allegations cannot be substantiated and that there was no requirement for further investigation unless new additional information was forthcoming. The material I have decided to release should be considered in light of this.

Next steps and review rights

9. If you are satisfied with my decision you can inform the IC that you wish to withdraw your application for IC review. If you are not satisfied with my decision, you can continue your IC review application and my decision becomes the IC reviewable decision in accordance with section 55G of the FOI Act.

FOI disclosure log

10. In accordance with the requirements of section 11C [Publication of information in accessed documents] 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.

11. If you have any questions about this decision please contact either myself or Mr Neil Phillips on (02) 6266 3664.

Yours sincerely



Damien Chifley

Enclosures:

1. Copy of section 47F of the FOI Act
2. Documents in the form approved for release