



Australian Government
Department of Defence
Defence Support and Reform Group

Information Management
and Access Branch
Department of Defence

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 307/14/15

[REDACTED]
By email: [REDACTED]

Dear [REDACTED]

VARIATION OF NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

I refer to your Freedom of Information (FOI) request [307/14/15] in which you sought access to documents relating to Operation Habitat.

In our letter dated 15 June 2015, we advised you that the decision maker had authorised the partial release of six documents that match the description of your request. For your ease of reference, a copy of that letter is at Enclosure 1.

The purpose of this letter is to advise that this decision has been varied to release one document in its entirety, and partially release five documents. The decision in respect to each document is recorded in the schedule of documents at Enclosure 2. A copy of the documents in the form approved for release is at Enclosure 3.

Thank you for your payment of the balance of charges associated with the processing of your request. The FOI Directorate received evidence of your payment on 30 June 15.

Should you have any questions, please contact this office.

Yours sincerely

[REDACTED]
John Peterson
Case Officer
Freedom of Information

30 June 2015

Enclosures:

1. FOI Directorate letter dated 15 June 2015
2. Schedule of documents
3. Documents approved for release



Our reference: FOI 307/14/15

[REDACTED]
By email: [REDACTED]

Dear [REDACTED]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your correspondence of 2 April 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

"The decision-making documents toward a submission by the APPVA to the Clarke Review, which was passed onto the ADF Nature of Service Branch [NOSB] in 2008, that relates to the requested Reclassification of service for OPERATION HABITAT [Northern Iraq], from "Hazardous Service" to "Warlike Service".

This request includes all reference materials listed that were used in the research toward the Reclassification of Service request; briefing notes; correspondence to and from the CDF and/or Defence Agencies related to the research from NOSB; and the content of any information that provided the decision-making process by the NOSB toward the matter of Reclassification. [Item 1]

The above request also includes the briefing documents that formulated the response by the then Parliamentary Secretary to the Minister of Defence, Dr Mike Kelly, AM, MP to both ^{47F}[REDACTED] and the APPVA." [Item 2]

Revised scope

2. By email dated 11 April 2015, you refined your request, to:

- a. **Item 1** as set out above, and
- b. the briefing pack provided to, the then, Parliamentary Secretary to the Minister of Defence, Dr Mike Kelly, AM, MP to in regards to the response to both ^{47F}[REDACTED] and the APPVA." **[Item 2]**

Background

3. On 14 April 2015, our office 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 agreement to pay the charges was received in this office on 16 April 2015. As such, the statutory deadline for processing your request was 14 May 2015.

4. On 4 May 2015, you kindly agreed to a 30-day extension of the statutory deadline under section 15AA [Extension of time with agreement] of the FOI Act. Therefore the statutory deadline is now 14 June 2015. I note that the above mentioned due date is a Sunday. 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 15 June 2015.

5. 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

6. Group Captain (GPCAPT) R Kettle, Director Logistic Plans, Headquarters Joint Operations Command, is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

7. GPCAPT Kettle identified six discrete documents as matching the description of your request.

Decision

8. Following examination of the documents, GPCAPT Kettle decided to partially release them with deletions made in accordance with subsection 22(1) [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 sections 7 [Exemption of certain persons or bodies]; or under 33 [Documents affecting national security, defence or international relations], and/or 47F [public interest conditional exemptions-personal privacy] of the FOI Act.

Material taken into account

9. In making his decision; GPCAPT Kettle had regard to:
- a. the terms of the FOI request;
 - b. the content of the documents that fall within the scope of the request;
 - c. the 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);
 - e. the principles on open public sector information issued by the Information Commissioner; and

- f. advice from Defence officers with responsibility for matters relating to the documents meeting the scope of the request.

Reasons for Decision

Section 7 – Exemption of certain persons and bodies

10. Upon examination of the documents GPCAPT Kettle identified information relating to an organisation exempt from the operation of the FOI Act, under section 7 of the FOI Act.
11. Subsection 7(2A) of the FOI Act provides that agencies that are otherwise subject to the FOI Act are exempt from the operations of the FOI Act in relation to documents that originated with, or that have been received from, specific agencies, including the Australian Signals Directorate (ASD).
12. When a person makes a request under section 15 of the FOI Act for access to any document in the possession of ASD, Defence is not required to treat it as a 'request' in light of the foregoing, access to the requested information is refused on the grounds that the documents originated in an agency which is exempt under section 7 of the FOI Act.
13. Therefore, GPCAPT Kettle decided to refuse access to the information as it refers to an agency exempt from the operation of the FOI Act.

Section 33 - Documents affecting national security, defence or international relations

14. Where access has been denied under section 33 of the FOI Act, GPCAPT Kettle considered that the deleted material would, or could reasonably be expected to, cause damage to the defence and/or international relations of the Commonwealth.
15. In applying this exemption, GPCAPT Kettle considered the likelihood of damage occurring as a result of release of the material that he considered to be exempt under section 33. In regards to the terms 'would reasonably be expected to' and 'damage', the Guidelines provide:

5.13 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of the documents.

5.14 The use of the word 'could' in this qualification is less stringent than 'would', and so requires no more than a degree of reasonableness being applied to deciding whether disclosure would cause the consequences. Therefore, the reasonable expectation refers to activities that might reasonably be expected to have occurred be presently occurring, or could occur in the future.

5.25 Damage for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage was likely to result from disclosure of the documents(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments.'

Subparagraph 33(a)(ii) of the FOI Act

16. Subparagraph 33(a)(ii) of the FOI Act exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the defence of the Commonwealth.

17. GPCAPT Kettle found that disclosure of the information exempted under subparagraph 33(a)(ii) of the FOI Act, would cause, or could reasonably be expected to cause, damage to the defence of the Commonwealth.

18. GPCAPT Kettle was satisfied that the relevant material is exempt under subparagraph 33(a)(ii) of the FOI Act because it details limitations on the ADF's freedom of action. If this information were to be released it would inform adversaries of both the likely current and future limitations on the ADF's freedom of action, which would place the ADF at a tactical disadvantage and could expose ADF members to unnecessary risk.

19. The Guidelines relevantly state that 'defence of the Commonwealth' includes:

5.28 ...

- *meeting Australia's international obligations*
- *ensuring the proper conduct of international defence relations ... [and]*
- *protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

20. Accordingly, GPCAPT Kettle decided to exempt certain information from release under subparagraph 33(a)(ii) of the FOI Act, on the basis that its disclosure would, or could reasonably be expected to, cause damage to the defence of the Commonwealth.

Subparagraph 33(a)(iii) of the FOI Act

21. Subparagraph 33(a)(iii) of the FOI Act, exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. 'International relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them, including relations between government agencies.

22. Further, the guidelines state that '... the phrase does encompass intangible damage, *such as loss of trust and confidence in the Australian Government...*'.

23. GPCAPT Kettle identified information within the document that relates to foreign governments' position and intentions and Australia's intentions in relation to these and, if disclosed, could diminish the positive working relationship between Australia and other governments.

24. Accordingly, GPCAPT Kettle decided to exempt certain information from release under subparagraph 33(a)(iii) of the FOI Act, on the basis that its disclosure would cause, or could reasonably be expected to cause, damage to the international relations of the Commonwealth.

Section 47F of the FOI Act

25. Upon examination of the documents, GPCAPT Kettle identified information specifically names, addresses, telephone numbers, and email addresses belonging to people other than you. A document is conditionally exempt if its disclosure under this Act would involve the unreasonable

disclosure of personal information about any person (including a deceased person). In accordance with section 47F of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to the following matters:

- 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; and
 - c. the availability of the information from publicly accessible sources.
26. Against those criteria, GPCAPT Kettle found that:
- a. the specific personal information is not well known to the general community; and
 - 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; and the specific information is not readily available from publicly accessible sources.

27. GPCAPT Kettle found that a number of documents contained personnel information. GPCAPT Kettle considered this information constitutes personal information under section 4 of the FOI Act.

28. Having considered the above, GPCAPT Kettle decided that the disclosure of this information would be an unreasonable disclosure of personal information belonging to persons other than you. Accordingly, GPCAPT Kettle considered this material to be conditionally exempt under section 47F of the FOI Act.

29. Section 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless in the circumstances access to the documents would, on balance, be contrary to the public interest.

Section 47F of the FOI Act - Public Interest Considerations

30. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, GPCAPT Kettle considered the guidelines provided by the Australian Information Commissioner, together with a range of factors that favour access to a document as set out in section 11B(3) [Public interest exemptions - factors favouring access] of the FOI Act.

31. GPCAPT Kettle considered the public interest in promoting the objects of the FOI Act have been satisfied and did not believe the release of personal information such as personnel identification, would inform public debate on any matter of public importance in a meaningful way. In coming to the above decision, GPCAPT Kettle also considered subsection 11B(4) [Public interest exemptions - irrelevant factors] of the FOI Act. Accordingly, GPCAPT Kettle was satisfied that on balance the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents.

Declassification of documents

32. A number of the documents matching the scope of this request were classified. The appropriate authorities declassified the versions of the documents that are approved for release.

Payment of Charges

33. In our letter, dated 14 April 2015, 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 16 April 2015, an invoice for the preliminary assessment deposit of [REDACTED] was subsequently sent directly from Defence Finance.

34. Upon completion of your request, after deducting the free decision making time, the actual amount for processing exceeded the original estimate provided to you. 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.

35. Accordingly you are required to pay the remaining [REDACTED] 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 to foi@defence.gov.au.

Rights of review

36. 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

37. 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

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

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

Yours sincerely



John Peterson
Case Officer
Freedom of Information

15 June 2015

Enclosures:

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