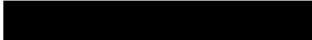
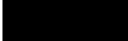




Our reference: FOI 308/13/14



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 3 March 2014, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“...Defence Security Authority final investigation reports regarding lost or stolen Defence items or other things for the last three full financial years (FY10/11-FY12/13).”

Revised scope

2. By email dated 5 March 2014, you were advised that your request, in its current form, was at risk of refusal under section 24 of the FOI Act as the work involved would be considered an unreasonable diversion of the resources of the agency. By email on the same date, you requested the department provide you with a schedule of the investigations identified, to assist with narrowing the scope of your request. The schedules (one for each of the financial year requested) were provided to you on 24 March 2014.

3. By email, dated 25 March 2014, you revised the scope of your request to the following final reports:

- INV-DSA01-SIU-2013-25 – Item 1*
- INV-DSA01-SIU-2012-30 – Item 2*
- INV-DSA01-SIU-2012-16 – Item 3*
- INV-DSA01-SIU-2011-75 – Item 4*
- INV-DSA01-SIU-2011-19 – Item 5*

Background

4. On 1 May 2014, I sought your agreement to extend the statutory deadline, in accordance with section 15AA of the FOI Act, by 14 days. You agreed to the requested extension on the same day.

5. On 14 May 2014, the FOI Decision maker determined that there was a requirement to consult a number of parties under section 27 of the FOI Act. However, as the initial 30 day processing timeframe had already expired I was unable to extend the deadline by 30 days in accordance with section 15(6) of the FOI Act. However, I sought your agreement to further extend the deadline by 16 days, in accordance with section 15AA of the FOI Act. You advised by return email that you agreed to the further extension, noting that the new due date was 6 June 2014.

6. 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

7. Mr Mark Hill, Accredited FOI Decision Maker, Intelligence and Security Group, was the authorised decision maker, under the FOI Act, in relation to your request.

Documents identified

8. Mr Hill identified four documents as matching the scope of your itemized request above. A schedule of documents is at Enclosure 1.

Decision

9. Mr Hill decided to refuse access to one document and release the remaining documents with material deleted, in accordance with section 22 [access to edited copies with exempt or irrelevant material deleted] of the FOI Act, on the grounds that the material is considered exempt under sections 33 [documents affecting national security, defence or international relations], 47F [public interest conditional exemptions – personal privacy] and 47G [public interest conditional exemptions – business] of the FOI Act.

Material taken into account

10. In making his decision, Mr Hill 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);
- e. the Principles on open public sector information issued by the Information Commissioner; and
- f. responses from parties formally consulted under the FOI Act.

Reasons for decision

Section 24A

11. In regards to Item 1 of the request, Mr Hill advised that he was unable to locate the requested document. He conducted a full search of the relevant Defence Information & Communications Technology systems and hard copy records. Notwithstanding the thorough and diligent searches undertaken, Mr Hill advised that the document could not be located; as such he decided to refuse access to Item 1 of your request under section 24A of the FOI Act.

Section 33 – documents affecting national security, defence or international relations

12. In regards to the terms ‘could 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 document(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments.^[10] A dispute between individuals may have sufficient ramifications to affect relations between governments. It is not a necessary consequence in all cases but a matter of degree to be determined on the facts of each particular case.

13. In regards to the ‘defence of the Commonwealth’, the Guidelines state:

Defence of the Commonwealth

5.28 The Act does not define ‘defence of the Commonwealth’. Previous AAT decisions indicate that the term includes:

- *meeting Australia’s international obligations*
- *ensuring the proper conduct of international defence relations*
- *detering and preventing foreign incursions into Australian territory*
- *protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

5.29 Damage to the defence of the Commonwealth is not necessarily confined to monetary damage (see paragraph 5.25 above). However, in all cases, there must be evidence that the release of the information in question will be likely to cause the damage claimed.

14. Mr Hill found that disclosure of the specific information contained within the document identified as matching Item 2 of the request, would cause, or could reasonably be expected to cause, damage to the defence of the Commonwealth. The material Mr Hill considered to be exempt relates to a product used by Defence to secure its ICT systems. Disclosure of such material could inform adversaries of the systems used by Defence. It could also be used by the person who is in possession of the laptop to gain access to the computer. Accordingly, Mr Hill was satisfied that the deleted material is exempt under section 33(a)(ii) of the FOI Act.

Section 47F – public interest conditional exemptions – personal privacy

15. Mr Hill found that the documents identified as matching Items 2, 3, 4 & 5 of the request contained names, contact details and signatures of DSA investigators. He found that they also contained identifying information such as names, gender, dates of employment and other identifying information of ADF members, Defence personnel and contractors to Defence. Mr Hill was satisfied that the identified material meets the definition of personal information for the purposes of the FOI Act.

16. In accordance with section 47F (2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, Mr Hill had regard to:

- i. the extent to which the information is well known;
- ii. whether the person to whom the information relates is known to be (or to have been) associates with the matters dealt with in the document; and
- iii. the availability of the information from publicly accessible sources.

17. Against these criteria Mr Hill found:

- i. the specific pieces of personal information are not well known;
- ii. the majority of people to whom the information relates are not known to be (or to have been) associated with the matters dealt with in the documents; and
- iii. the specific pieces of personal are not readily available from publicly accessible sources.

18. Noting the findings of the above criteria, Mr Hill considered that the release of this material would be an unreasonable disclosure of personal information and therefore, he was satisfied that the material is conditionally exempt under section 47F of the FOI Act.

Section 47F – public interest considerations

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

20. In regards to the application of the 'Public Interest' test, the Guidelines state:

6.9 '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'.

21. Mr Hill considered the range of factors that favour access to a document, as set out in section 11B(3) of the FOI Act. He considered that the public interest in promoting the objects of the FOI Act had been satisfied by assessing this case on its merits and in accordance with the guidance on good decision making principles. Mr Hill did not believe that the release of the identified personal information would inform public debate on any matter of public importance in a meaningful way.

22. On balance, he also considered that the release of the identified personal information could cause unreasonable stress on the parties identified in the documents and he considered that there would not be any public benefit from such a release. Further, Mr Hill considered that there is a greater public interest in Defence being seen to protect individuals from releases such as this.

23. Accordingly, after taking all of the above into consideration Mr Hill was satisfied that the public interest factors against disclosure outweigh the factors for disclosure and found the material identified was exempt under section 47F of the FOI Act.

Section 47G – public interest conditional exemptions – business

24. Mr Hill found that the documents identified as matching Item 3, 4 & 5 of the scope of the request contained information regarding a number of organisations contracted by Defence. Mr Hill considered that the information, if released, would adversely affect the organisations in respect of their lawful business and commercial affairs. He was therefore satisfied that the material was conditionally exempt under section 47F of the FOI Act.

25. Mr Hill directed the FOI Directorate to undertake consultation with a number of parties with regard to possible release of the above mentioned material. He took the responses into account when making his decision.

Section 47G – public interest considerations

26. In considering the public interest, Mr Hill again reviewed section 11A(5) of the FOI Act, he considered that disclosure of the identified documents may promote the objects of the FOI Act by granting access to government held information. Mr Hill did not consider that disclosure of the specific conditionally exempt material would inform debate on a matter of public importance, nor promote effective oversight of public expenditure.

27. Mr Hill was of the view that the material, if disclosed, is such that an unreasonable and inaccurate assumption might be made that could result in adverse understanding concerning that organisation. Mr Hill considered that this could have an adverse effect with regard to that organisations current and future involvement with Defence and the Commonwealth. Mr Hill considered that the public interest in Defence protecting sensitive proprietary information of companies is in the public interest.

28. Mr Hill considered that the public interest factors against disclosure outweigh the factors for disclosure and he therefore decided that the material in the documents identified as matching Items 3, 4 & 5 contain material that is exempt under section 47G of the FOI Act.

Payment of Charges

29. In our letter, dated 31 March 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 8 April 2014, an invoice for the preliminary assessment deposit of [REDACTED] was subsequently sent directly from Defence Finance.

30. Upon completion of your request, after deducting the free decision making time, the actual amount for processing was calculated to be [REDACTED]. The remaining balance is the difference between actual charges and the deposit you have already paid.

31. Accordingly you are required to pay the remaining [REDACTED] in order to finalise your request. Please find attached at Enclosure 2 a Payment Authorisation Form for the balance. Once you have completed the form please return it to foi@defence.gov.au.

Rights of review

32. 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 3.

FOI Disclosure Log

33. 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

34. The FOI Act may be accessed online at: <http://www.comlaw.gov.au/Details/C2011C00803>.

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

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

6 June 2014

Enclosures:

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