



Our reference: FOI 310/14/15



By email: 

Dear 

## **NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST**

1. I refer to your email, dated 7 April 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

*"In a response to the ABC's 7.30 Report tonight, the Defence Spokesperson stated:  
"Defence conducted a review of Health Information Practices in late 2013"*

### **Background**

2. On 10 April 2015 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. Your letter agreeing to pay charges for the processing was received in this office on 8 May 2015. As such, the statutory deadline for processing your request is **5 June 2015**.

3. 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**

4. Mr P.B. Naveau, Director, Health Materiel Logistics and Pharmacy, Joint Health Command, is the accredited decision maker, under the FOI Act, in relation to your request.

### **Documents identified**

5. Mr Naveau identified one document, *Review of Health Information Practices in Defence – Review Report December 2013*, as matching the description of your request.

## Decision

6. Mr Naveau has decided to release the document with deletions made in accordance with section 22 [Access to edited copies exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is exempt under sections 47F [Public interest conditional exemptions – personal privacy] and 47E(d) [Public interest conditional exemptions – certain operations of agencies] of the FOI Act:

### Material taken into account

7. In making his decision, Mr Naveau had regard to:
- a. the terms of the request;
  - b. the content of the identified document in issue;
  - c. relevant provisions in the FOI Act;
  - d. Defence guidance material on the FOI Act;
  - e. the Guidelines published by the Office of the Australian Information Commissioner *under section 93A of the FOI Act* (the Guidelines);
  - f. the Principles on open public sector information issued by the Information Commissioner; and
  - g. advice provided by the area whose duties relate to the requested document.

### Reasons for decision

#### Section 47E – certain operations of agencies

8. Upon examination of the identified document Mr Naveau found that it contained information that he considers would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth.

9. Subsection 47E(c) of the FOI Act states:

*'A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following: ...*

*(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;'*

10. In relation to subsection 47E(c) of the FOI Act, the Information Commissioner's guidelines advise that, where the document relates to management of personnel, the decision maker must address whether:

- a. an effect would be reasonably expected following disclosure; and
- b. the expected effect would be both substantial and adverse.

11. Specifically, the material Mr Naveau identified relates to unit level rates of fitness to deploy. If this information were released, it would reasonably be expected to have a substantial adverse effect on the proper and efficient management or assessment of personnel pre-deployment. Mr Naveau considered this justifies exemption under subsection 47E(c) of the FOI Act.

12. Mr Naveau also considered paragraph 6.105 of the Guidelines which states that if documents are to be exempt under subsection 47E(c) of the FOI Act, they must relate to *the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassments and occupational health and safety*. He considers that the specific information meets these criteria.

### **Section 47F – personal privacy**

13. Upon examination of the document Mr Naveau identified information, specifically, names, personal identification numbers, and personal information of third parties other than you. This material satisfies the definition of personal information in section 47F(1) of the FOI Act. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, Mr Naveau had regard to:

- a. the extent to which the information is well known;
- b. whether the individuals to whom the information relates is known to be, or to have been, associated with the matters dealt with in the documents;
- c. how the information was obtained, that is, in confidence and/or using information gathering powers;
- d. whether any public purpose would be achieved through release of the personal information; and
- e. the availability of the information from publicly accessible sources.

14. Against the above criteria, Mr Naveau found that:

- a. the specific personal information is not well known to the general community;
- b. whilst some of the information is known to certain elements, the person/s to whom the information relates, is not known to be, or to have been, associated with the matters dealt with in the document by the general community; and
- c. the specific information is not readily available from publicly accessible sources.

15. Noting the findings against the above criteria, Mr Naveau decided that the disclosure of this information would constitute an unreasonable disclosure of personal information belonging to individuals other than you. Accordingly, Mr Naveau considered this material to be conditionally exempt under section 47F of the FOI Act.

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

### **Public interest considerations – sections 47E and 47F**

17. Mr Naveau noted that conditionally exempt documents carry a public interest test. Mr Naveau considered section 11B of the FOI Act which sets out factors favouring access and irrelevant factors when considering the public interest test.

18. Subsection 11B(3) states factors favouring access to the document in the public interest include whether access to the document would do any of the following:

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

19. Mr Naveau considered that the public interest in promoting the objects of the Act have been satisfied as, in his opinion, merely removing names, personal identification numbers, and personal information of third parties from the document does not detract from public disclosure of government-held information.

20. Mr Naveau considered that there is a public interest in protecting the privacy of individuals whose personal details appear in the documents and supporting operational data. Taking all of the above into consideration, on balance, Mr Naveau considered that disclosure of personal information relating to third parties would be contrary to the public interest.

21. In coming to the above decision, Mr Naveau had regard to subsection 11B(4) [irrelevant factors] of the FOI Act, which lists factors which must not be taken into account in deciding whether access would, on balance, be contrary to the public interest. None of the factors Mr Naveau took into account were listed under subsection 11B(4) of the FOI Act.

22. Accordingly, Mr Naveau considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents that match the scope of this request. Therefore, Mr Naveau decided that it would be contrary to the public interest to release the information considered exempt under section 47F of the FOI Act.

### **Declassification of documents**

23. The document matching the scope of this request was classified “Limited distribution”. The decision maker has declassified the versions of the documents that are approved for release.

### **Payment of Charges**

24. In our letter, dated 10 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 8 May 2015, an invoice for the preliminary assessment deposit of [REDACTED] was subsequently sent from Defence.

25. 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.

26. 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](mailto:foi@defence.gov.au).

### **Rights of review**

27. 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**

28. 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 with privacy deletions.

### **Further advice**

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

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

Yours sincerely



Andrea Sansom  
Assistant Director  
Freedom of Information

4 June 2015

Enclosures:

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