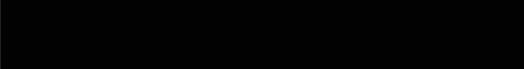




Our reference: FOI 313/13/14



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 28 February 2014, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

"We seek documents and information concerning the assistance rendered by HMAS "NEWCASTLE" to the motor tanker "PERLA" and her crew, around 5 -11 June 2013, following a catastrophic fire aboard "PERLA". The Department of Defence's Media Release of 11 June 2013 refers (<http://news.defence.gov.au/2013/06/11/hmas-newcastle-provides-medical-care-to-badly-injured-merchant-seamen/>).

Specifically, we request any documents in your possession, custody or control, including:

- *Any accounts or reports prepared by crew aboard HMAS "NEWCASTLE" concerning the assistance rendered to "PERLA" and/or her crew.*
- *Any records and/or notes of communications between HMAS "NEWCASTLE" and "PERLA", including any distress signals received from "PERLA".*
- *Any photographs of "PERLA", not included on Department of Defence's Media Gallery.*
- *Any records containing names of other vessels within the vicinity of HMAS "NEWCASTLE" and "PERLA" at the time of the assistance.*
- *Any weather records between 6-11 June 2013."*

2. Please note that this decision is based on documents from the Royal Australian Navy as mentioned in paragraph 2 of the preliminary assessment of charges and does not include:

- a. Signals sent from HMAS *Newcastle* regarding this matter. This messaging system (Mercury Message Handling System) only stores signals for three months on the ships hard drives; and
- b. Documents held on HMAS *Newcastle* Defence Secret Network (DSN) System. The DSN System on HMAS *Newcastle* is undergoing maintenance until the 5 May 2014 and will not be accessible until after that period.

Background

3. On 6 March 2014, 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 7 March 2014. As such, the statutory processing time for your request expires on 6 April 2014.

4. 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 expires on 7 April 2014.

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. Captain Christine Clarke, Director Navy Personnel Policy, Royal Australian Navy, was the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

7. Captain Clarke identified 34 documents as matching the description of your request. A Schedule of documents is at Enclosure 1.

Decision

8. Captain Clarke has decided to:

- a. release in full 27 documents;
- b. partially release three documents 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 irrelevant material or is exempt under section 47F [Public interest conditional exemptions-personal privacy] of the FOI Act; and
- c. deny access to four documents as they are already available to the public through the Defence Image gallery .

Material taken into account

9. In making her decision, Captain Clarke 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. advice received from officers within the department.

Reasons for decision

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

10. Section 22 of the FOI Act provides that if an agency or Minister decides to refuse access to an exempt document, and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

11. Where it was practicable to prepare a copy of a document modified by deletions, such that the edited copy would no longer be exempt, I have made such a copy in accordance with section 22 of the FOI Act.

Section 47F – Personal privacy

12. Section 47F(1) of the FOI Act provides that a document is conditionally exempt if 'disclosure under this Act would involve the unreasonable disclosure of personal information about any person'.

13. In making her decision, Captain Clarke considered whether:

- a. the documents contained personal information;
- b. the disclosure of the personal information would be unreasonable; and
- c. whether the disclosure of this information would, at this time, be contrary to public interest.

Personal information

14. The information deleted from the requested documents under section 47F are:

- a. names of third parties; and
- b. personal signatures.

15. As a person's identity is apparent or reasonably ascertainable from the deleted information, Captain Clarke decided that it constitutes personal information.

Unreasonable to disclose

16. In determining whether release of the above personal information is unreasonable, Captain Clarke took into account, inter alia:

- 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 within the document; and
- c. the availability of the information from publicly accessible sources.

17. Against these criteria, Captain Clarke found:

- a. the deleted material is not well known;
- b. in some cases, the people to whom the information relates are not widely known to be (or to have been) associated with the matters dealt with in the documents; and
- c. the deleted information is not available from publicly accessible sources.

18. Where individuals have been identified as acting in their official capacity, this information has not been deleted as this does not constitute an unreasonable disclosure of personal information.

Public interest considerations – Section 47F

19. In determining whether to release the documents, Captain Clarke considered the guidelines provided by the Australian Information Commissioner, together with a range of factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. Captain Clarke had regard to whether giving access to you at this time would, on balance, be contrary to the public interest. Specifically, Captain Clarke considered if disclosure of the document would:

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

20. In reviewing the request, Captain Clarke decided that releasing the requested documents may promote some of the objects of the FOI Act.

21. Regarding the deletions made in accordance with section 47F of the FOI Act, there is a public interest in protecting the privacy of individuals whose personal details appear in documents. This includes, inter alia, information of the nature described at paragraph 14. Given the nature of this information, Captain Clarke decided that it would not inform debate on a matter of public importance, nor would their release promote effective oversight of public expenditure or prevent a person's access to his or her personal information.

22. 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 and other third parties.

23. In deriving her decision, Captain Clarke also considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act. After assessing of all these factors, Captain Clarke decided that the harm that could arise from disclosure of the personal information far outweighs any favourable public interest factors that could be gained from their release.

Payment of Charges

24. In our letter, dated 6 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 7 March 2014, an invoice for the preliminary assessment deposit of [REDACTED] was subsequently sent directly from Defence Finance.

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 2 a Payment Authorisation Form for the balance. Once you have completed the form please return to foi@defence.gov.au.

Declassification of documents

27. One of the documents matching the scope of this request was classified 'RESTRICTED'. The decision maker has declassified the version of the document that was approved for release.

Rights of review

28. 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

29. 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

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

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

Yours sincerely



Sally Philp
Assistant Director
Freedom of Information

31 March 2014

Enclosures:

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