



Our reference: FOI 347/14/15

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

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

"The Reference is: AM1686396 estimated to be dated July 2014 onward.

Title: "Review of Recognition for 1 Cdo Regt Members for ASM with Clasp CT/SR."

Author: COL Donoghue on behalf of DSOS, Special Operations Command Australia [SOCOMAUST].

Type: Project Officer Recommendations for the 1 Commando Regiment [1 Cdo Regt]; Australian Service Medal [ASM] Clasp Counter Terrorism/Special Recovery [CT SR] Proposal, represented by Paul Copeland, The Australian Peacekeeper & Peacemaker Veterans' Association [APPVA], on behalf of members of 1 Cdo Regt."

Background

2. By email of 5 May 2015, we advised you that Mr Nathan Costigan, Assistant Director FOI, waived any FOI charges that may otherwise have been payable for the processing of your request. Accordingly, the statutory deadline for you to receive a response to your request is 31 May 2015.

3. The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

4. Colonel (COL) M.R.C. Kennedy, Director Personnel Policy – Army, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

5. COL Kennedy identified one document titled "Review of Recognition For 1 CDO REGT Members For ASM With Clasp CT/SR" dated 27 August 2014, as matching the description of your request.

Decision

6. COL Kennedy decided to release the identified document with deletions made 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 considered exempt under section 33 [Documents affecting national security] and/or under section 47F [Public interest conditional exemptions-personal privacy] of the FOI Act.

7. A copy of the document in the form approved for release is at Enclosure 1.

Material taken into account

8. In making his decision, COL Kennedy had regard to:
- a. the terms of the request;
 - b. the relevant provisions in the FOI Act;
 - c. the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - d. advice received from Special Operations Command.

Reasons for Decision

Security of the Commonwealth – Subsection 33(a)(i) of the FOI Act

9. Section 33 exempts material from release if its disclosure would, or could reasonably be expected to, cause damage to the security or defence of the Commonwealth. 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) on question, a decision maker could have regard to the relationships between individuals representing respective governments. 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.*

10. In regards to the 'security of the Commonwealth', the guidelines state:

Security of the Commonwealth

5.26 *The term 'security of the Commonwealth' broadly refers to:*

(a) *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests...*

5.27 *A decision maker must be satisfied that damage to the security of the Commonwealth would be caused by disclosure of the information under consideration. The claim has been upheld in the following situations:*

(b) *The disclosure of a defence instruction of the Army's tactical response to terrorism and procedures for assistances in dealing with terrorism would pose a significant risk to security by revealing Australia's tactics and capabilities.*

11. COL Kennedy identified information within the document that, if released, could jeopardise the capability of the ADF. This particular information pertained to the names of Special Forces personnel who have been awarded Protected Identity Status. If the names of members of this Unit are released it could expose these personnel to unnecessary risk and provide an adversary with a tactical advantage.

12. Taking the above into account, COL Kennedy was satisfied that the identified information is exempt under subsection 33(a)(i) of the FOI Act.

Personal privacy - Section 47F of the FOI Act

13. Upon examination of the document, COL Kennedy noted that it contains the signature and mobile phone number of a Defence member.

14. To determine whether the disclosure of the identified personal information was unreasonable, COL Kennedy had regard to the criteria specified in section 47F(2) of the FOI Act:

- a. the extent to which the information is well known;
- b. whether the persons to whom the information relates are 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.

15. Against these three criteria, COL Kennedy found:

- a. the specific personal information listed is not well known;
- b. the individuals whose personal information is contained in the document are not widely known to be associated with the matters dealt with in the documents;
- c. the information is not readily available from publicly accessible sources.

16. With reference to the assessment above, COL Kennedy considered that the release of the signature and mobile phone number of a Defence member would be an unreasonable disclosure of personal information and therefore conditionally exempt under section 47F(1) of the FOI Act.

17. Section 11 A (5) of the FOI Act requires Defence to allow access to conditionally exempt documents unless access to the documents would be contrary to the public interest.

Public interest considerations - Section 47F

18. When assessing whether disclosure is on balance, contrary to the public interest, COL Kennedy 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] of the FOI Act.

19. COL Kennedy considered the public interest in promoting the objects of the FOI Act was satisfied and did not believe the release of the identified personal information would inform public debate on any matter of public importance in any way. Additionally the disclosure of this information would not promote oversight on public expenditure or allow a person to access his or her own personal information.

20. In coming to his decision, COL Kennedy also considered subsection 11B(4) [Public interest exemptions – 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 COL Kennedy took into account were listed under subsection 11B(4) of the FOI Act.

21. COL Kennedy found that the public interest factors against disclosure outweigh the factors for disclosure of the identified personal information and deemed the information exempt under section 47F of the FOI Act.

Rights of review

22. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, “Freedom of Information – Your Review Rights”, setting out your rights of review is at Enclosure 2.

FOI Disclosure Log

23. 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 publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

Further information

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

25. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



John Peterson
Case Officer
Freedom of Information

20 May 2015

Enclosures:

1. Document in the form for release
2. Fact Sheet: Freedom of Information – Your Review Rights