



Our reference: FOI 356/14/15



Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email of 26 April 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

"I seek a document that shows the names, titles and dates of all Public servants, ministers, defence and political staff who travelled with Prime Minister Tony Abbott to Uruzgan Province in Afghanistan."

Background

2. The thirty-day statutory period for processing your request commenced on 26 April 2015 when it was received by Prime Minister and Cabinet, and subsequently transferred to Defence, under section 16 [Transfer of requests] of the FOI Act. However, processing was suspended when we dispatched our preliminary assessment of charges letter to you on 7 May 2015. The thirty-day statutory period for processing recommenced on 15 May 2015, when we received the above mentioned payment. Therefore, the thirty-day statutory deadline is **3 June 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. Group Captain (GPCAPT) C Wallis, Director of Corporate and Community Relations – Air Force, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on your request.

Document identified

5. GPCAPT Wallis identified one document as matching the description of your request.

Decision

6. GPCAPT Wallis 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 either irrelevant or considered exempt under section 33 [Documents affecting national security, defence or international relations] of the FOI Act.

Material taken into account

7. In making her decision, GPCAPT Wallis had regard to:
- a. the terms of the request;
 - b. the content of the document in issue;
 - c. relevant provisions in the FOI Act;
 - d. paragraph 6.29 the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
 - e. principles on open Public sector information issued by the Information Commissioner

Reasons for decision

Section 22 of the FOI Act – Irrelevant matter

8. Upon examination of the document, GPCAPT Wallis found that it contained the names of persons who were not considered to be public servants, ministers, or Australian Defence and political staff who travelled with Prime Minister Tony Abbott to Uruzgan Province in Afghanistan. As such, GPCAPT Wallis considered these names to be irrelevant to the request, and deleted them under subsection 22 (1)(b)(ii) of the FOI Act.

Exemption claim – section 33 (a)(iii) of the FOI Act

Subsection 33(a)(iii) of the FOI Act - International Relations

9. Subsection 33(a)(iii) of the FOI Act exempts a document from release if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

10. Upon examination of the document, GPCAPT Wallis identified information that relates to military assets of a foreign government. The disclosure of that information would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

11. In applying this exemption, GPCAPT Wallis considered the likelihood of damage occurring as a result of release of the material. 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 requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is 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...'*

12. 'International Relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relationships with other governments and international organisations. If this material were to be released it could reasonably be expected to have an impact on the ability of the Australian Government to maintain a good working relationship with that government.

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

14. GPCAPT Wallis identified information within the document that relates to foreign governments' capabilities and Defence's strategies in relation to these and, if disclosed, could diminish the positive working relationship between Australia and another other government.

15. GPCAPT Wallis was satisfied that the document contains information that could reasonably be expected to damage the international relations of the Commonwealth and deemed that this information is exempt under subsection 33(a)(iii) of the FOI Act.

Payment of Charges

16. In our letter, dated 7 May 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 15 May 2015, when you paid a deposit of [REDACTED].

17. 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, which amounts to [REDACTED].

18. 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 foia@defence.gov.au.

Rights of review

19. 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

20. 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

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

22. 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

3 June 2015

Enclosures

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