




Australian Government
Department of Defence

Freedom of Information
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2610
Tel: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

Our reference: FOI 365/15/16



By email: 

Dear Ms Sandy

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

I refer to your email, dated 12 June 2015, in which you revised the scope of your request to access, under the *Freedom of Information Act 1982* (FOI Act), to:

“Access to correspondence to the Chief of Army relating to inquiries made by Robert Ovidia and/or Channel 7 in relation to the JEDI Council.

The timeframe for this request is 12 April 2013 - 11 May 2015.

Please exclude duplicates, documents that have already been publicly released, media statements/reports/articles, correspondence with media, draft media statements, and talking points.

In the event that emails are captured, please only include the final thread of the conversation.”

Background

On 22 June 2015, our office informed you that the decision maker had determined that there was a requirement to consult with third parties under section 27A [Consultation – documents affecting personal privacy] of the FOI Act, before finalising the decision. As such, in accordance with section 15(6) [extension of processing period to comply with requirement of section 27A] of the FOI Act, the statutory timeframe was amended to 7 August 2015.

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

Colonel Andrew Hocking, Deputy Chief of Staff, Army Headquarters, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

Colonel Hocking identified 5 documents as matching the description of your request.

The decision in relation to each document is detailed in a schedule of documents, which will be provided when the documents are released (refer to below for further information).

When documents are released, you will note that for ease of reference and for the purpose of processing this request, the decision maker has added an FOI Item number to each of the documents, which corresponds with the schedule.

Decision

Colonel Hocking has decided to partially release documents with deletions made in accordance with subsection 22(1) [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 47F [public interest conditional exemptions-personal privacy].

However for the reasons outlined below, the documents are not included with this decision letter.

Material taken into account

In making his decision, he 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 third parties.

Reasons for decision

Personal privacy - Section 47F of the FOI Act

Serial 5 (ministerial submission) contains the name and personal information of an ex-member that was terminated as a result of the inappropriate use of Defence's ICT systems.

To determine whether the disclosure of the identified personal information of this member was unreasonable, Colonel Hocking had regard to the criteria specified in section 47F(2) of the FOI Act. He also had regard to the Guidelines issued by the Australian Information Commissioner.

The Guidelines note that 'the personal privacy exemption is designed to prevent 'unreasonable' invasion of third parties' privacy'. In determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Colonel Hocking had regard to:

- 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
- c. the availability of the information from publicly accessible sources.

In reference to the above he found that, specific personal information contained in serial 5 is widely known and readily available from publicly accessible sources.

The media has maintained an continuing interest in the so called 'Jedi Council' incident, keeping the public informed through regular reporting about the developments in both the internal and civilian investigations into the incident. The personal information of Mr Fredrickson contained within the ministerial submission is publically available.

Personal information of third parties

The identified documents contain personal information of individuals other than the Mr Ovadia and Mr Fredrickson; it is therefore appropriate to consider whether this information is exempt from release under the FOI Act. As part of the decision making process Colonel Hocking sought third party consultation, one of the third parties objected to the release of their personal information.

Serials 1- 5 contain the names, mobile phone numbers and personal information such as personal opinion of individuals other than the applicant. This information could be used to reasonably ascertain the identity of an individual and therefore satisfies the definition of personal information in section 4 of the FOI Act.

To determine whether the disclosure of the identified personal information was unreasonable, Colonel Hocking 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
- c. the availability of the information from publicly accessible sources.

Against these three criteria, he 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.

In relation to serials 1-5, Colonel Hocking considered the release of the names, mobile phone numbers and personal information of individuals other than the applicant and Mr Fredrickson to be an unreasonable disclosure of personal information and therefore conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations - Section 47F

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.

In making his decision Colonel Hocking had regard to paragraph 6.9 of the Guidelines which states:

'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.'

He acknowledged that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, there is a public interest in protecting the privacy of individuals whose personal details appear in a document.

Although the release of the material maybe of some interest to the applicant, it would not inform public debate on any matter of public importance in any meaningful way. Additionally, disclosure of the information would not promote oversight of public expenditure or prevent a person's access to his or her personal information.

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.

In coming to his decision, Colonel Hocking also considered subsection 11B(4) [public interest exemptions - irrelevant factors] of the FOI Act.

After assessing all of these factors, he decided that the harm that could arise from disclosure of the personal information far outweighs any favourable public interest factors that would be gained from their release.

As such, Colonel Hocking deemed the information exempt under section 47F of the FOI Act.

Third party consultation

As detailed above, the decision maker decided to consult with third parties regarding their information which was contained in the documents. In response to this consultation, some of the third parties have objected to the release of their personal information.

In accordance with subsection 27A(5) [decision to give access] of the FOI Act, I am required to advise the third parties of Colonel Hocking's decision.

This Department is prevented by paragraph 27A(6) [access not to be given until review or appeal opportunities have run out] of the FOI Act from providing the documents to you until it becomes apparent that the third parties do not propose to exercise their right to seek review of the decision. The third parties have until 8 September 2015 to appeal the decision. Accordingly, I will write to you after this date to inform you of the outcome.

Your Review Rights

Internal Review

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. You must request a review, in writing, within 30 days of the date of this letter, or the date you receive the documents. Requests can be sent to:

Email: FOIReview@defence.gov.au

Fax: 02 626 62112

Post: Freedom of Information Directorate - Reviews

Department of Defence

CP1-6-029

PO Box 7910

CANBERRA BC ACT 2610

Australian Information Commissioner

Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992
Fax: 02 9284 9666
Post: GPO Box 2999
Canberra ACT 2601

Complaints

You may complain to Defence, the Information Commissioner or the Commonwealth Ombudsman about an action taken by Defence in the exercise of its power or the performance of its functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Department of Defence, your complaint can be addressed to Mr Tony Corcoran using the contact details below:

Email: Tony.corcoran@defence.gov.au
Post: Tony Corcoran
Assistant Secretary Information Management and Access Branch
CP1-6-14
PO Box 7911
CANBERRA BC ACT 2610

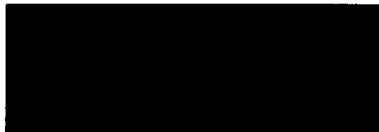
Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)
Fax: 02 6276 0123
Post: Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Contact details for the Information Commissioner are above.

Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Michelle Rueckert
Assistant Director

7 August 2015