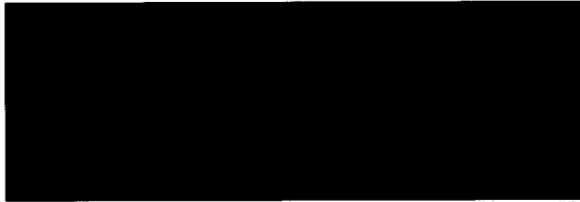




Australian Government
Department of Defence

Our reference: FOI 367/14/15



By email: [REDACTED]

Dear [REDACTED]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

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

“...any emails, letters, briefing notes or briefings to the Minister or the Chief of Army about security breaches at the SAS Campbell Barracks in Swanbourne in the past 2 years, including details about Ben Cousins being found in the barracks and whether security cameras were working, and being monitored, at the time he was was found on the grounds.”

Background

On 1 May 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. You provided the receipt for your payment of the required deposit on 15 May 2015. As such, the statutory deadline for processing your request was 11 June 2015.

On 1 June 2015 I 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) of the FOI Act, the statutory timeframe was amended to 11 July 2015.

I note that the above mentioned due date is a Saturday. 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 is 13 July 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 MRC Kennedy, Director, Personnel Policy – Army was the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

Colonel Kennedy identified two documents that fall within the scope of this request.

Decision

Colonel Kennedy decided to partially release the identified documents with deletions under section 22 [Access to edited copies with exempt or irrelevant matter deleted] of the FOI Act. He deemed the deleted material exempt under sections 33 [documents affecting national security, defence or international relations] and 47F [public interest conditional exemptions – personal privacy] of the FOI Act. Colonel Kennedy's reasons for this decision are outlined below.

Material taken into account

Colonel Kennedy had regard to:

- a. the terms of the request
- b. the content of the documents in issue
- c. relevant provisions in the FOI Act
- d. the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act
- e. advice received from Army Headquarters and Special Operations Command (SOCOMD)
- f. third party responses to consultation.

Reasons for Decision

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

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.

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.*

The identified documents contain the name of a member from SOCOMD who has been awarded protected identity status. Colonel Kennedy was of the view that if the name of this member was disclosed it could expose them to unnecessary risk and provide an adversary with a tactical advantage.

Taking the above into account Colonel Kennedy was therefore satisfied that the operational information identified within the documents is exempt under section 33(a)(i) of the FOI Act.

Personal information of third parties

Colonel Kennedy noted that the identified documents contain personal information of individuals other than you and it is appropriate to consider whether this information is exempt from release under the FOI Act. As part of the decision making process, Colonel Kennedy sought third party consultation. He considered the results of the third party consultation when making his decision below.

Personal Privacy - Section 47F(1) of the FOI Act

The documents contain information relating to an incident involving Mr Ben Cousins at Swanbourne Barracks in March 2015. This incident received a high degree of media attention due to Mr Cousins' public profile. In coming to his decision Colonel Kennedy had regard to information that is widely known and readily available from publicly available sources. As such, he considered that it is not unreasonable to release some of the personal information identified in the documents.

Colonel Kennedy also identified that the documents contain personal information such as mobile phone numbers, personal opinion and personal information of persons other than you. He considered the disclosure of this material would constitute an unreasonable disclosure.

The guidelines issued by the Australian Information Commissioner note that 'the personal privacy exemption is designed to prevent 'unreasonable' invasion of third parties privacy'. In accordance with subsection 47F(2), in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Colonel Kennedy had regard to:

- 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 with in the document
- c. the availability of the information from publicly accessible sources
- d. any other matters that the agency considers relevant.

Against those criteria, Colonel Kennedy found:

- a. the specific personal information listed is not well known
- b. the information is not readily available from publicly accessible sources.

With reference to the assessment above, Colonel Kennedy considered that the release of the identified personal information would be an unreasonable disclosure of personal information and is therefore conditionally exempt under section 47F(1) of the FOI Act.

Public interest consideration = s47F

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

When assessing whether disclosure is on balance, contrary to the public interest, Colonel 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.

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
- d. allow a person to access his or her own personal information.

In considering the above points, Colonel Kennedy found that disclosure of the requested documents may promote some objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of the requested documents would not increase public participation in Government processes, nor would it increase the scrutiny or discussion of Government activities. While he noted that the release of the requested material may be of interest to you, it would not allow you access to your own personal information.

Colonel Kennedy further 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 he took into account were listed under subsection 11B(4) of the FOI Act.

After assessing all of these factors, Colonel Kennedy decided that the harm that could arise from disclosure of the personal information outweighs any favourable public interest factors that would be gained from their release and he deemed the information exempt under section 47F of the FOI Act.

Payment of Charges

On this occasion, I have decided to exercise my delegation and to cap the charges payable to the deposit amount already paid. Accordingly, copies of the documents in the form approved for release are at Enclosure 1.

FOI Disclosure Log

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. Publication will occur on 17 July 2015.

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 as on the previous page.

Should you have any questions in regard to this matter please contact the FOI office on the details below or me directly by return email or on (07) 3332 6359.

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information
Department of Defence
CP1-6-001, PO Box 7910
CANBERRA BC ACT 2610

Phone Number: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

10 July 2015

Enclosure:

1. Documents in the form approved for release