




Our reference: FOI 368/14/15



By email: 

Dear 

## **NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST**

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

1. *Chief of Navy Senate Estimate Briefs relating to Drugs and Drug Testing or Prohibited Substances.*
2. *Reports or notifications of Deaths in Service submitted to the Chief of Navy which are linked to drug abuse.*

*The time frame is from January 1, 2010 until April 7, 2015.*

*I do not require personal details of navy personnel who may be named in those reports as being involved in taking or supplying of drugs.*

### **Background**

2. On 15 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 forwarded the receipt for payment of the required deposit on. As such, the statutory deadline for processing your request was 15 June 2015.

3. On 12 June 2015, I sought your agreement, in accordance with section 15AA of the FOI Act, to extend the FOI processing time by seven days. You responded on the same day with your

agreement. Taking the extension into account the statutory timeframe was amended to 22 June 2015.

4. 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**

5. Commander GN Fiedler, RAN, Deputy Director Navy Ministerials and Coordination, was the accredited decision maker, under the FOI Act, in relation to your request.

#### **Documents identified**

6. Commander Fiedler identified 35 documents, totalling 119 pages, as being within the scope of this request. He advised that the documents are Senate Estimate Briefs, as well as reports and notifications or briefs prepared for the Chief of Navy (CN) regarding deaths in service which are linked to drug abuse.

7. A schedule of documents is at enclosure 1.

#### **Decision**

8. Following examination of the documents, Commander Fiedler decided to:

- a. release 26 documents in full; and
- b. partially release nine 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 exempt under section 47F [Public interest conditional exemptions-personal privacy] of the FOI Act.

#### **Material taken into account**

9. In making his decision Commander Fiedler had regard to the following:

- a. the terms of the request;
- b. *Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
- c. *Principles on open public sector information* listed on the website of the Office of the Australian Information Commissioner;
- d. *the factors favouring or against disclosure* in the public interest listed on the website of the office of the Australian Information Commissioner; and
- e. advice received from officers within the Department.

## **Reasons for decision**

### ***Explanatory notes***

10. Commander Fiedler advised that some statistical data contained within the CN Senate Estimate briefs, in particular, briefs from earlier years and data listed for FY 2010/11, is inconsistent between briefs and has resulted from changing reporting mechanisms and processes as the Prohibited Substance Testing Program (PSTP) has evolved over time. The most accurate data is reflected in the document marked as Serial 25 of Enclosure 1 (October 2014 brief), although this brief also has incorrect data for FY 2010/11. The correct data for FY 2010/11 is: 3640 people tested, 24 positive test results equating to a percentage of 0.66.

11. Consultation was undertaken within Navy and more broadly within Defence to determine which Navy deaths in service might have links to drug abuse. Searches were then conducted in the offices of CN, Commander Australian Fleet (COMAUSFLT) and Navy Ministerials and Coordination to identify relevant documents. Commander Fiedler was satisfied that all reasonable steps had been taken to locate the documents you requested and he was advised that no further documents exist.

12. When considering reports and notifications to CN regarding deaths in service, Commander Fiedler decided to release the documents marked as Serials 27-32 of Enclosure 1, even though there is no information within these documents that link the deaths to drug abuse. Commander Fiedler explained that these reports are provided to CN within a relatively short timeframe after a death and are based on information known at the time, not detailed investigations. Knowledge of these deaths having varying contributory links to drug abuse was established well after the deaths and through more detailed and formal investigative processes such as post-mortems or Coroner's investigations. In the spirit of the FOI Act, Commander Fiedler included these documents to meet the broad intent of your FOI application.

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

13. 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.

14. Where it was practicable to prepare a copy of the documents modified by deletions, such that the edited copy would no longer be exempt, Commander Fiedler made such copies in accordance with section 22 of the FOI Act.

### **Section 47F – Conditionally exempt personal information**

15. 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 (including a deceased person)'. Importantly in this case, Commander Fiedler noted the inclusion of deceased persons within the meaning of personal information.

16. In making his decision, Commander Fiedler considered whether:
- a. the document 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***

17. The information identified as conditionally exempt from the requested documents under section 47F is:

- a. names of third parties;
- b. personnel employee identification numbers;
- c. personal opinions;
- d. information which might identify third parties;
- e. mobile telephone numbers; and
- f. personal signatures.

18. As a person's identity is apparent or reasonably ascertainable from the identified information, Commander Fiedler decided that it constituted personal information.

***UNREASONABLE TO DISCLOSE***

19. In determining whether release of the above personal information is unreasonable, Commander Fiedler 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.

20. Against those criteria, Commander Fiedler 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.

***PUBLIC INTEREST CONSIDERATIONS UNDER SECTION 47F***

21. In determining whether to release the documents, Commander Fiedler 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. He had regard to whether giving access to you at this time would, on balance, be contrary to the public interest. Specifically, he considered if disclosure of the documents 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.

22. In reviewing the request, Commander Fielder decided that releasing the requested documents may promote some of the objects of the FOI Act and some aspects of the documents related to illicit drug use might be considered a matter of public importance given current wider community awareness of issues associated with the use of illicit drugs.

23. 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 17. While the identified personal information might be of interest to you, given the very sensitive nature of this information relating to deceased Navy personnel, Commander Fielder decided that the information would not inform debate on a matter of public importance, nor would its release promote effective oversight of public expenditure or prevent a person's access to his or her personal information.

24. Conversely, the release of the identified material 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.

25. In deriving his decision, Commander Fiedler also considered subsection 11B(4) [public interest exemptions – irrelevant factors] of the FOI Act. After assessing of all these factors, he 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 its release.

**Payment of Charges**

26. In our aforementioned letter after deducting the free decision making time, the department estimated the cost associated with processing your request to be [REDACTED]. Upon completion of your request, after deducting the free decision making time, the actual amount for processing exceeded the original estimate provided to you. However, as explained in the above mentioned letter the amount payable can only be more than the preliminary assessment if the decision is to release all of the documents requested in full.

27. Accordingly you are required to pay [REDACTED] in order to finalise your request, being the difference between the deposit you paid and the preliminary assessment of FOI Charges. Please find attached at Enclosure 2 a Payment Authorisation Form for the balance. Once you have completed the form please return it to [foi@defence.gov.au](mailto:foi@defence.gov.au).

### **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 can be accessed online at: <http://www.comlaw.gov.au/Details/C2015C00013>.

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

Yours sincerely



Theresa Stinson  
Assistant Director – Media Case Management  
Freedom of Information

22 June 2015

Enclosures:

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