



Australian Government
Department of Defence
Defence Support and Reform Group

Ministerial and Information
Management Branch
Department of Defence

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 421/13/14

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

1. I refer to your four emailed letters, dated 25 April 2014, in which you requested access under the *Freedom of Information Act 1982* (FOI Act), to:

“1. ...documents containing information about any ADF, ADFA or ADFIS inquiries and/or reports into incidents, including sexual assaults and/or indecent assaults and/or harassment and/or bullying and/or intimidation and/or unacceptable behaviour at ADFA since 11 April 2011.

2. ...information about the Defence Abuse Response Taskforce (DART) investigation and defence’s handling of claims – particularly those originating from ADFA – occurring after the DART’s 11 April 2011 cut-off date.

3. ...documents containing information including “hot issues briefs” and/or “back of pocket briefs and/or other briefs or reports prepared for the minister, departmental secretary or the head of the ADF about any incidents at ADFA or involving ADFA cadets or staff since 11 April 2011.

4. ...to documents containing information, including correspondence, reports or case summaries or other documents involving the 12 serving defence members who are suspected of committing rapes and sexual assaults at ADFA in the mid to late 1990s.”

2. You advised our office that you were happy for your requests to be managed administratively, that is outside of the FOI Act. On 6 June 2014, Mr Damien Chifley, Acting Assistant Secretary, Ministerial & Information Management provided you with an administrative response by email.

3. On 9 June 2014, you acknowledged receipt of the administrative release but advised that you wished to proceed with the processing of your request.

4. On 16 June 2014, Ms Andrea Sansom, Acting Director, Freedom of Information provided, via email, the details of three documents that would appear to meet the intent of your original inquiries. You agreed to proceed with the following scope:

1. *Brief for CDF: Defence Abuse Response Taskforce Report - Assessment of the 'ADFA 24' Cases, dated 4 Nov 13, 7 pages*
2. *MINSUB: Defence Abuse Response Taskforce - referrals to Defence for possible disciplinary, administrative or management action dated 18 Dec 13, 4 pages*
3. *ADFIS report 5/2013 Contextualised unacceptable behaviour data, dated 17 May 2013, 3 pages*

5. 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

6. Ms Andrea Sansom, Acting Director, Freedom of Information is the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

7. Ms Sansom identified the three requested documents as detailed at paragraph 4 above.

Decision

8. Ms Sansom decided to partially release Documents 1 & 2 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 sections 47E [public interest conditional exemptions – certain operations of agencies] and 47F [public interest conditional exemptions-personal privacy] of the FOI Act.

9. On review, Ms Sansom found that Document 3 did not meet the intent of your original inquiries, which focussed on the Australian Defence Force Academy (ADFA), as the data contained in the document relates to the Australian Defence Force generally. Taking this into account, Ms Sansom found that Document 3 was technically irrelevant to the scope of your request and as such access has not been granted in accordance with section 22(1)(a)(ii) of the FOI Act. Ms Sansom reviewed the document thoroughly and found that the data relating to ADFA alone could not be extracted from the complete ADF data contained in the document.

Material taken into account

10. In making her decision Ms Sansom 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. Defence guidance material on the FOI Act and the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the guidelines); and
 - e. advice provided by the areas whose duties more closely relate to the requested documents.

Reasons for Decision**Section 47F – public interest conditional exemptions – personal privacy**

11. Ms Sansom found that document 1 contained mobile phone numbers of Defence personnel. She was satisfied that the identified material met the definition of personal information for the purposes of the FOI Act.

12. In accordance with section 47F (2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, Ms Sansom had regard to:

- i. the extent to which the information is well known;
- ii. 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; and
- iii. the availability of the information from publicly accessible sources.

13. Against those criteria Ms Sansom found:

- i. the specific pieces of personal information are not well known;
- ii. the people to whom the information relates are not known to be (or to have been) associated with the matters dealt with in the documents; and
- iii. the specific pieces of personal are not readily available from publicly accessible sources.

14. Noting the findings of the above criteria, Ms Sansom considered that the release of this material would be an unreasonable disclosure of personal information and therefore, she was satisfied that the material is conditionally exempt under section 47F of the FOI Act.

Section 47F – public interest considerations

15. Section 11A(5) of the FOI Act requires Defence to allow access to exempt documents unless, in the circumstances, access to the documents would, on balance, be contrary to the public interest.

16. In regards to the application of the ‘Public Interest’ test, the Guidelines state:

6.9 ‘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’.

17. Ms Sansom considered the range of factors that favour access to a document, as set out in section 11B(3) of the FOI Act. She considered that the public interest in promoting the objects of the FOI Act had been satisfied by assessing this case on its merits and in accordance with the guidance on good decision making principles. Ms Sansom did not believe that the release of the specific personal information would inform public debate on any matter of public importance in a meaningful way.

18. Accordingly, after taking all of the above into consideration Ms Sansom was satisfied that the public interest factors against disclosure outweigh the factors for disclosure and found the material identified was exempt under section 47F of the FOI Act.

Section 47E – public interest conditional exemptions – certain operations of an agency

19. Document 2 contained a reference to a breakdown of cases as they relate to gender. Ms Sansom considered that the disclosure of this material could have a substantial adverse effect on the proper and efficient conduct of the operations of Defence’s management of the Defence Abuse Response Taskforce (DART) process.

20. Section 47E(d) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

21. Ms Sansom considered that some of the people who have provided information to the DART for consideration have done so on the basis that their information would remain confidential. While it is the case that some people involved in the process have been happy to waive their right to confidentiality, it is not possible to determine whether this is the case for the matters referred to in the identified document. As the process is continuing it would be unreasonable to disclose the breakdown of gender, and as such Ms Sansom considered the material was conditionally exempt under section 47E(d) of the FOI Act.

Section 47E – public interest considerations

22. Ms Sansom again considered the relevant factors which favours access to requested documents. She noted that the disclosure may promote the objects of the FOI Act, as information held by the government is a national resource. However, disclosure of the exempt information would not increase public participation in Defence's processes, nor would it increase scrutiny or discussion of Defence activities.

23. Ms Sansom noted that the release of the information may be of some interest to you, it would not inform public debate on any matter of public importance in any meaningful way.

24. Ms Sansom considered that the public interest in protecting people involved in a process, such as the DART, would far outweigh any public interest in the release of this material at this stage.

25. Taking the above into consideration Ms Sansom decided that it would be contrary to the public interest to release the specific information considered exempt under section 47E(d) of the FOI Act.

26. Copies of the documents in the form approved for release are at Enclosure 1.

Rights of review

27. 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

28. 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

29. The FOI Act can be accessed at: <http://www.comlaw.gov.au/Details/C2011C00803>.

30. 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



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

18 July 2014

Enclosures:

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