



Australian Government

Department of Defence

Chief Operating Officer

Freedom of Information and
Information Management Branch
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Our reference: FOI 015/12/13

By email: [REDACTED]

Dear [REDACTED]

1. I refer to [REDACTED] letter dated 4 July 2012, which was received in our office on 11 July 2012 via an email from you, in which he sought access, under the *Freedom of Information Act 1982* (FOI Act), to:

“...a copy of the legal advice referred to in paragraphs 5 and 6 of reference B [ADF HPPS 25 111 1 Minute to CO 2 CDO REGT of 13 Apr 12]”

2. The purpose of this letter is to provide [REDACTED] with a decision in response to his request.

FOI decision maker

3. Mr Robert McKellar, Director Coordination Defence People Group, is the authorised decision maker, under the FOI Act, in relation to [REDACTED] request.

Identified documents

4. Mr McKellar identified one document, an email trail entitled “RE: Request for advice in relation to the MSB Retention Benefit”, as matching the description of [REDACTED] request.

Decision

5. Upon examination of the document identified at paragraph 4, Mr McKellar decided to release it with a deletion 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] of the FOI Act.

6. A copy of the document in the form approved for release is at Enclosure 1.

Material taken into account

7. In making his decision, Mr McKellar had regard to:
- the content of the document in issue;
 - relevant provisions of the FOI Act;
 - the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
 - *Principles on open public sector information* issued by the Information Commissioner; and
 - advice from Defence Legal.

Exemption claim - Section 47F of the FOI Act

8. On review of the requested document, Mr McKellar found that it contained personal information, specifically a mobile phone number, belonging to a person other than [REDACTED]
9. In accordance with subsection 47F(2), in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Mr McKellar 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; and
 - c. the availability of the information from publicly accessible sources.
10. Against those criteria, Mr McKellar found that:
- a. the specific personal information is not well known; and
 - b. this information is not readily available from publicly accessible sources.
11. After careful consideration of the above factors, Mr McKellar decided that, on balance, the disclosure of this material would involve the unreasonable disclosure of personal information belonging to a person other than [REDACTED] and is therefore conditionally exempt under section 47F of the FOI Act.
12. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

Public interest considerations

13. In assessing whether disclosure is, on balance, contrary to the public interest, Mr McKellar considered the range of factors favouring access to a document as set out in section 11B(3) [public interest exemptions - factors] of the FOI Act. Mr McKellar noted that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, the disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

14. While Mr McKellar noted that release of this material may be of some interest for [REDACTED] [REDACTED] it would not inform public debate on any matter of public importance in any meaningful way.

15. Additionally, Mr McKellar formed the view that disclosure of the information would not promote oversight of public expenditure, nor would it allow [REDACTED] further access to his own personal information.

16. In coming to the above decision, Mr McKellar also had regard to subsection 11B(4) [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 Mr McKellar took into account were listed under subsection 11B(4) of the FOI Act.

17. Accordingly, Mr McKellar considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the relevant material within the document that matches the scope of the request. Therefore, Mr McKellar decided that it would be contrary to the public interest to release the information considered exempt, under subsection 47F of the FOI Act.

18. Copies of relevant sections of the FOI Act are at Enclosure 2.

Additional information – status of the “legal advice”

19. Mr McKellar has informed us that while the letter originally sent to [REDACTED] referred to legal advice, there was no legal advice received on [REDACTED] case or the 15-year question more generally. The email identified as meeting the description of the document requested is not legal advice, rather it is advice from Defence Legal Division to the Directorate of Service Conditions and Housing Policy on questions of policy, including on the 15-year threshold question. Mr McKellar stated that the first paragraph of the email refers to legal advice provided by the Directorate of Military Justice to a Commanding Officer: this advice was on an unrelated question in respect of a different member and has no bearing on [REDACTED] case nor relevance to any considerations leading to the decision on [REDACTED] eligibility for the MSBS Retention Benefit.

20. Mr McKellar noted that the original letter to [REDACTED] conveying the decision on [REDACTED] application for the MSBS Retention Benefit did not need to introduce the matter of the 15 year threshold, as this was not relevant to the decision. Rather the decision turned upon [REDACTED] not meeting the rank requirements for eligibility.

Rights of review

21. 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.

Further advice

22. All departmental action on [REDACTED] request is now complete. Should you or [REDACTED] have any questions relating to the matter, please contact me, either by telephone on (02) 6266 4713 or via email to FOI@defence.gov.au.

Yours sincerely



Phillip Connelly
Case Officer
Freedom of Information
1 August 2012

Enclosures:

1. Document in the form approved for release.
2. Relevant sections of the FOI Act.
3. Fact Sheet: Freedom of Information – Your Review Rights.