



**Australian Government**

**Department of Defence**

Chief Operating Officer

Freedom of Information and  
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Our reference: FOI 042/12/13

By email: [REDACTED]

Dear [REDACTED]

1. I refer to your email of 30 July 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to documents relating to ecological communities on certain properties used by the Department of Defence.

2. By email dated 2 August 2012, Mr Rod Dudfield, Director Freedom of Information (FOI), informed you that your request was not considered valid under sub-paragraph 15(2)(b) of the FOI Act.

3. After further discussions with you, we confirmed, by email dated 3 August 2012, that we had now validated your request on the basis that a property of interest includes 'Redgrove' (not 'Redgrave'). Accordingly, the scope of your request was understood to be access to:

*"...reports, mapping, tests, surveys carried out in relation to the presence of any endangered ecological communities (particularly Warkworth Sands Woodland) on lands known as the Singleton Army Base and/or the Singleton Military Area in Singleton NSW for the period 1 January 2008 to present."*

4. You did not disagree with this interpretation.

5. On 31 August 2012, our office advised you that the decision maker had determined that there was a requirement to consult under section 27 [consultation - business documents] of the FOI Act, before finalising the decision. As such, under section 15(6) of the FOI Act the statutory deadline was extended to 5 October 2012.

6. The purpose of this letter is to provide you with a decision in response to your request.

**FOI decision maker**

7. Mrs Sarah Brown, Chief of Staff to Head Infrastructure, is the authorised decision maker, under the FOI Act, in relation to your request.

**Identified documents**

8. Mrs Brown identified two documents as matching the description of your request.
9. A schedule of documents is at Enclosure 1.

**Decision**

10. Upon examination of the documents, Mrs Brown decided to:
  - a. release one document intact; and
  - b. release one document with deletions made in accordance with subsection 22(1) of the FOI Act, on the grounds that the deleted material is considered exempt under subsection 47F [public interest conditional exemptions - personal privacy] of the FOI Act.
11. Please note that the schedule at Enclosure 1 outlines Mrs Brown's decision against each document. For ease of reference and for the purposes of processing this request, an FOI serial number has been added to each of the documents, which corresponds with the schedule.
12. Copies of the documents in the form approved for release are at Enclosure 2.

**Material taken into account**

13. In making her decision, Mrs Brown had regard to:
  - a. the content of the documents in issue;
  - b. relevant provisions in the FOI Act;
  - c. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
  - d. principles on open public sector information issued by the Information Commissioner; and
  - e. advice from the consulted third party.

**Exemption claim - Section 47F of the FOI Act**

14. On review of the requested document, Mrs Brown found that they contained personal information, specifically names and contact details, of persons other than you.
15. In accordance with subsection 47F(2), in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Mrs Brown 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.

16. Against those criteria, Mrs Brown found that:

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

17. After careful consideration of the above factors, Mrs Brown decided that, on balance, the disclosure of this material would involve the unreasonable disclosure of personal information belonging to a person other than you and is therefore conditionally exempt under section 47F of the FOI Act.

18. 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

19. Section 11A(5) provides that conditionally exempt matter must be released unless, in the circumstances, access to that document would, on balance, be contrary to the public interest. The Guidelines state (at 6.8-6.9):

*"The term 'public interest' is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered.*

...

*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, whereon balance the public interest lies, based on the particular facts of the matter at the time the decision is made."*

20. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Mrs Brown considered the range of factors that favour access to a document set out in subsection 11B(3) [public interest exemptions - factors favouring access] of the FOI Act. Mrs Brown 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 Government processes, nor would it increase scrutiny or discussion of Government activities.

21. Mrs Brown noted that the release of this material may be of some interest to you, however it would not inform public debate on any matter of public importance in any meaningful way. In addition, Mrs Brown formed the view that the need to withhold the third party personal information outweighs any interest you may have in the material.

22. In coming to the above decision, Mrs Brown 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 Mrs Brown took into account were listed under subsection 11B(4) of the FOI Act.

23. Accordingly, Mrs Brown considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, Mrs Brown decided that it would be contrary to the public interest to release the information considered exempt under section 47F [public interest conditional exemptions - personal privacy] of the FOI Act.

24. Copies of relevant sections of the FOI Act are at Enclosure 3.

#### **Payment of Charges**

25. In our letter of 3 August 2012, the department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay charges for the administration of your request and paid the preliminary assessment deposit on 6 August 2012.

26. Upon completion of your request, the actual amount for processing was determined to be [REDACTED]. Accordingly, you are entitled to a refund for the charges paid towards the processing of your request. As you paid a deposit of [REDACTED], you are entitled to a refund of [REDACTED]. To enable the department to process your refund, could you please complete the form at Enclosure 4.

27. The original value, outlined above, was based on an assessment of four minutes per page to examine the documents (along with additional decision making time). Initially, the action area considered this to be an appropriate foundation for the assessment as the documents were believed to contain considerable sensitive information (such as financial information). However, upon further inspection, it was determined that the material within the documents was not as complex as initially expected. Accordingly, the final assessment of charges was considerably lower than the preliminary assessment.

#### **FOI Disclosure Log**

28. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish, on its website, information released under the FOI Act within 10 working days of the applicant being given access to documents. Defence will also publish the decision notice, with personal and business information deleted. The information published does not include personal information or the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable. Other information not published also includes that which the Australian Information Commissioner determines is unreasonable to publish.

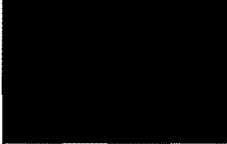
#### **Rights of review**

29. 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 5.

**Further advice**

30. All action on your request is now complete. Should you 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](mailto:FOI@defence.gov.au).

Yours sincerely



Phillip Connelly  
Case Officer  
Freedom of Information

21 September 2012

**Enclosures:**

1. Schedule of Documents
2. Copies of documents in the form approved for release.
3. Relevant sections of the FOI Act.
4. Freedom of Information Refund Processing Form
5. "Freedom of Information - Your Review Rights".