



Australian Government

Department of Defence

Office of the Chief Operating Officer

Freedom of Information and
Information Management Branch
CPI-6-001
Campbell Park Offices
PO Box 7910
CANBERRA BC ACT 2610
Tel: (02) 626 62200
Fax: (02) 626 62112
FOI@defence.gov.au

Our reference: FOI 069/12/13



By email: [REDACTED]

Dear [REDACTED]

1. I refer to your email, dated 19 August 2012, which we received on 20 August 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to documents relating to the operational availability and capability of HMAS Choules.
2. By email, dated 21 August 2012, you were advised that, as it stood, your request was not considered valid under section 15(2)(b) of the FOI Act. By email, also dated 21 August 2012, you advised that you wished to proceed with the following refined scope:

"Ministerial submissions provided to the Minister for Defence and/or Minister for Defence Materiel, between 1 March 2012 and 17 August 2012, reporting on major defects or maintenance issues that affect operational deployment or capability of HMAS Choules."

Background

3. 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

4. Captain S.J. Bateman, Director Navy Communications and Coordination, is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

5. Captain Bateman identified the following two documents as matching the scope of your request:
- a. Ministerial Submission CN/OUT/2012/178 of 22 June 2012; and
 - b. Ministerial Submission CN/OUT/2012/642 of 27 June 2012.

Decision

6. Following examination of the identified documents, Captain Bateman decided to release the documents with material removed, in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, which is considered exempt under section 47F [public interest conditional exemptions – personal privacy] and 47G [public interest conditional exemptions – business] of the FOI Act. Some material was also removed in accordance with section 22 of the FOI Act which was considered irrelevant to the scope of your request.

Reasons for decision

7. In making his decision, Captain Bateman had regard to:
- the content of the documents in issue;
 - relevant provisions in the FOI Act;
 - advice from Defence offices with responsibility for matters relating to the issues in the documents;
 - response from formal consultation process; and
 - the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the guidelines).

Public interest conditional exemptions

Section 47F

8. After examining the documents Captain Bateman found that the document identified above as 'a.' contained mobile telephone number of a Commonwealth employee that would involve the unreasonable disclosure of another persons personal information.

9. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Captain Bateman had regard to:

- a. the extent to which the information is well known;
 - b. whether the person to whom the information relates are known to be, or to have been, associated with the matter dealt with in the documents; and
 - c. the availability of the information from publicly accessible sources.
10. Against the above criteria, Captain Bateman found that:

- a. while the matter referred to in the documents was reported in the media, the specific personal information he considered to be exempt is not well known to the general community; and
- b. the specific information is not readily available from publicly accessible sources.

11. Noting the above findings, Captain Bateman decided that the disclosure of this information would be an unreasonable disclosure of personal information belonging to another person. Accordingly, Captain Bateman considered the material to be conditionally exempt under section 47F of the FOI Act.

Public interest consideration – section 47F

12. Subsection 11A(5) [access to documents on request] of the FOI Act required Defence to allow access to conditionally exempt documents unless, in the circumstances, access to the documents, would, on balance, be contrary to the public interest.

13. In assessing whether the disclosure is, on balance, contrary to the public interest, Captain Bateman considered the relevant factors set out in section 11B(3) [public interest exemptions – factors] of the FOI Act, which favours access to the documents. Captain Bateman noted that disclosure of the identified documents may promote the objects of the FOI Act, as information held by the government is a national resource. However, Captain Bateman considered that disclosure of personal mobile telephone numbers would not promote greater public participation in government processes, promote better-informed decision making or promote effective oversight of public expenditure, it would also not inform debate on a matter of public importance or provide the applicant with their own personal information. For these reasons, Captain Bateman decided to exempt the mobile telephone number under section 47F of the FOI Act.

Section 47G

14. Section 47G provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to:

'unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.'

15. Part 6 of the guidelines state that this exemption depends on the effect of disclosure rather than the precise nature of the information itself. Captain Bateman noted that this is the case in this particular instance where material has been exempted as it is considered that the detail could affect the business operations of a multinational company with customers located around the world. Captain Bateman advised that document 'a' contained material such as initial cost estimates for repair and possible lead times for delivery. Captain Bateman decided that the release of this material could have an unreasonable adverse effect on the company's business operation, and the material satisfied the criteria for conditional exemption under section 47G. He further noted that paragraph 6.161 of the guidelines state that the business affairs exemption is *"intended to protect the interests of third parties dealing with the government."*

Public interest consideration – section 47G

16. In assessing whether disclosure is on balance, contrary to the public interest, Captain Bateman considered the relevant factors set out in section 11B(3) of the FOI Act, which favours access to a document. Captain Bateman noted that disclosure may promote some of the FOI Act, as information held by the Government is a national resource. However, the disclosure of the exempted information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

17. Captain Bateman noted that while 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.

18. In coming to his decision, Captain Bateman also considered subsections 11B(4) and 11B(5) of the FOI Act. Specifically, section 11B(5) which states that he must have regard to the Information Commissioner's guidelines. In particular he referred to the following public interest factors against disclosure which are detailed in paragraph 6.29 of the guidelines:

(i) could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

and

(j) could reasonably be expected to prejudice the competitive commercial activities of an agency.

19. Accordingly, Captain Bateman considered that, on balance, public interest factors against disclosure outweigh factors for disclosure of the requested documents. Therefore, he decided it would be contrary to the public interest to release the exempt material.

Third party consultation

16. As part of the decision making process, Captain Bateman consulted with a third party regarding the release of their business information contained within the identified documents (specifically document 'a').

17. In response to the consultation, the third party objected to the release of some business information in the document, making two claims to apply the section 47G exemption. Captain Bateman considered the response and decided that he would accept one claim but reject the other. As such, he decided to release the document as detailed above.

Release of documents

18. In accordance with subsection 27(6) [decision to give access] of the FOI Act, Captain Bateman is required to advise the objecting third party of his decision to release the material they considered should be removed.

19. Although Captain Bateman decided to release the document with deletions, he is prevented by paragraph 27(7) of the FOI Act, from providing any material subject to review to you, until it becomes apparent that either the third party does not propose to exercise its right to seek review of his decision, or until the review process has been completed. Accordingly, the third party has until 21 November 2012 to appeal Captain Bateman's decision.

Section 22

20. In regards to the document identified above as 'b', Captain Bateman found that it contained material relating to the operational availability of ships other than HMAS Choules. As such, he considered that this material was considered to be irrelevant to the scope of your request, and decided to remove it. Captain Bateman decided that the remainder of the document, those bits relating to HMAS Choules, could be released intact.

Payment of Charges

21. In our letter, dated 30 August 2012, after deducting the free decision making time, 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 amount in full on 31 August 2012.

22. Upon completion of your request, the actual amount for processing matched the preliminary assessment of FOI charges. As such, you are not required to pay any further processing charges in respect to this request.

Rights of review

23. 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 1.

24. The FOI Act can be accessed online at: <http://www.comlaw.gov.au/Details/C2011C00138>

FOI Disclosure Log

25. 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 two working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions. I will advise you of the date for publication when the documents are released to you.

Further advice

26. Should you have any questions in regard to this matter please contact me directly on (07) 3332 6359. Alternatively, the FOI team can also be contacted on the details at the top of this letter.

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

22 October 2012

Enclosure:

1. Fact Sheet: Freedom of Information – Your Review Rights