



Australian Government
Department of Defence
Defence Support and Reform Group

Freedom of Information and
Information Management Branch
Department of Defence

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Our reference: FOI 149/12/13

[REDACTED]

By email: [REDACTED]

Dear Mr [REDACTED]

1. I refer to your emailed letter, dated 17 October 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“documents produced in the last three months prior to the resignation of Secretary of State Duncan Lewis showing correspondence between the former Secretary of Defence Duncan Lewis and the Defence Minister about the impact of cut backs in the defence budget.”

Background

2. The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

3. Mr Tony Corcoran, Assistant Secretary, Freedom of Information and Information Management is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

4. Mr Corcoran identified one document, being a 5-page Ministerial Submission, subject title “2012-13 Budget Outlook” as matching the description of your request.

Decision

5. Mr Corcoran has decided to release the identified document with material deleted, in accordance with section 22 [deletion of exempt matter] of the FOI Act as the deleted material is considered exempt under sections 34 [Cabinet documents], 47D [public interest conditional exemptions – financial or property interests of the Commonwealth] and 47F [public interest conditional exemptions – personal privacy] of the FOI Act.

Material taken into account

6. In making his decision Mr Corcoran had regard to:

- The content of the identified document in issue
- Relevant provisions in the FOI Act
- The guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the guidelines)
- Advice from officers in the Chief Finance Officer Group whose duties relate to the matters referred to in the document.

Exemption claims

Section 34

7. Mr Corcoran advised that he had reviewed the document and considered that it contained material which he considers would be exempt under sections 34(2) and 34(3) of the FOI Act. Mr Corcoran found that the document contained information such as costs and strategies for unapproved policy proposals prepared by Defence in the budget context for Cabinet.

8. Mr Corcoran noted that the document contained information which is an extract of material that was prepared for the dominant purpose of submission for consideration of Cabinet, in that it contained an extract from a document which has already been considered by Cabinet.

9. Furthermore, Mr Corcoran advised that the disclosure of other material in the document would divulge material that is yet to be considered or deliberated on by Cabinet, but was brought into existence for the dominant purpose of submission to Cabinet. The information contained in the submission is not yet endorsed in either a policy or fiscal sense by Government.

Public interest conditional exemptions

Section 47D – financial or property interests of the Commonwealth

10. Mr Corcoran found that paragraph 10 on page 2 of the identified document contained information regarding the Commonwealth's financial interests. Mr Corcoran found that if the material in paragraph 10 were to be released it would divulge options canvassed by Defence in managing its fiscal obligations; options that have not yet been considered or agreed to by Senior Defence officials and or the Minister.

11. In coming to his decision, Mr Corcoran had regard to paragraphs 6.80 and 6.81 of the guidelines. He considered that disclosing this information could have a substantial adverse effect on the financial interests of Defence in that it would constrain Defence's ability to achieve best value for money and the ability of Defence staff to put forward options for the management of the budget allocation.

Sections 11A & 11B

12. Section 11A(5) [access to documents on request] provides that conditionally exempt matter must be released unless, in the circumstances, access to that document at this time 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, where on balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

13. In balancing the public interest in this case, Mr Corcoran considered the range of factors set out in section 11B(3) [public interest exemptions – factors] in favour of disclosure. He noted that disclosure of the requested document may broadly promote the objects of the Act, as information held by the Government is a national resource and its disclosure would increase scrutiny and discussion on Defence's financial activities and budget.

14. In addition, Mr Corcoran considered that disclosure may also inform public debate on Defence's financial activities and budget. However, he did not believe that the release of this information would be in the public interest as it would constrain Defence's and the Government's policy options on matters where decisions have not yet been taken. He also considered that the release of the requested material is not likely to inform debate on any matter of public importance in any meaningful way, because as stated above the material contained in the documents is yet to be agreed on by Government.

15. Accordingly, Mr Corcoran considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure, therefore he decided that it would be contrary to the public interest to release paragraph 10 of the identified document under section 47D of the FOI Act.

Section 47F – personal privacy

16. After examining the identified document Mr Corcoran found that the identified document contained the mobile telephone number of a Commonwealth employee, which he considered would involve the unreasonable disclosure of another person's personal information.

17. 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, Mr Corcoran 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 matter dealt with in the document; and
- c. the availability of the information from publicly accessible sources.

18. Against the above criteria, Mr Corcoran found that:

- a. 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.

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

Public interest consideration – section 47F

20. In assessing whether the disclosure is, on balance, contrary to the public interest, Mr Corcoran considered the relevant factors set out in section 11B(3) of the FOI Act, which favours access to the document. As already noted above, disclosure of the identified document may promote the objects of the FOI Act, as information held by the government is a national resource. However, Mr Corcoran considered that disclosure of the personal mobile telephone number 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 you with their own personal information. For these reasons, Mr Corcoran decided to exempt the mobile telephone number under section 47F of the FOI Act.

Section 22

21. Notwithstanding the above, Mr Corcoran was required by section 22 of the FOI Act to consider releasing the identified document with exempt material removed. As such, he decided to release the document with exempt material removed.

Payment of Charges

22. In our letter, dated 24 October 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 of [REDACTED] on 26 October 2012.

23. Upon completion of your request, the actual amount for processing matched the original estimate. The remaining balance is the difference between actual charges and the deposit you have already paid.

24. Accordingly you are required to pay [REDACTED] in order to finalise your request. Please complete and return the form at Enclosure 2 to the FOI Directorate, this form is an agreement to pay charges and enables the FOI Directorate to continue processing your request without delay. Upon receipt of the form an invoice will be generated, noting this can take up to 3 business days. Details about payment of the invoice are on the form.

Rights of review

25. 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 3.

FOI Disclosure Log

26. In accordance with the requirements of section 11C [publication of information in accessed documents] 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.

Further advice

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

28. 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

19 November 2012

Enclosures:

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