Dear [Redacted]

Request

1. I refer to your email, dated 8 March 2012, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to the "Full DLA Piper report (Volume 1 and the first tranche of Volume 2) received by Minister Stephen Smith in October, 2011".

2. I advised you in a letter, dated 13 March 2012, that your request had been interpreted to be for access to those parts of the DLA Piper Review held by Defence.

3. Following receipt of the above mentioned letter, you refined the scope of your request to "The Executive Summary of the DLA Piper report received by Minister Smith in October, 2011" held by Defence.

4. 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

5. Mr Tony Corcoran, Assistant Secretary, Freedom of Information and Information Management, is authorised to make decisions under arrangements approved by the Secretary of the Department of Defence under section 23 of the FOI Act.

Document identified

6. Mr Corcoran identified the Executive Summary to the DLA Piper report, comprising 24 pages, as matching the scope of your request.
Factors taken into account

7. In making his decision, Mr Corcoran had regard to:
   a. the content of the identified document in issue;
   b. sections 3 and 21 of the FOI Act;
   c. the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act; and
   d. consultation with relevant parties.

Decision

8. Mr Corcoran has decided to release the document identified intact. However, pursuant to paragraph 21(1)(c) (deferment of access) of the FOI Act, he has decided to defer access to the identified document until 14 June 2012.

Reasons for deferment

9. Paragraph 21(1)(c) of the FOI Act allows a decision maker to defer access to a document if its premature release would be contrary to the public interest.

10. In balancing the public interest in this case, Mr Corcoran considered the following factors in favour of disclosure:
    a. promoting the objects of the FOI Act, particularly in increasing scrutiny, discussion, comment and review of Defence’s activities; and
    b. informing debate on a matter of public importance, namely allegations of sexual and other abuse in Defence.

11. Mr Corcoran also considered the following in favour of deferment:
    a. maximising the effectiveness and impact of the Executive Summary of the report so as to obtain greatest benefit from options to address the allegations; and
    b. the potential to prejudice Defence’s management of personnel before the development of an appropriate response to the report.

12. Mr Corcoran found that the release of the Executive Summary of the report intact would help inform the debate on an issue of public importance, namely allegations of sexual and other abuse in Defence.

13. However, Mr Corcoran found that the release of the complete Executive Summary of the report before the Government or Defence has had a full opportunity to consider the report and its findings is premature and would unduly inhibit the development of a response to the report. Furthermore, the premature release of the Executive Summary would be contrary to the public interest as it would constrain the Government’s options on matters where decisions have not yet been taken.
14. Additionally, Mr Corcoran found that, if the Executive Summary of the report were to be released before the Government or Defence had developed a response to the report and taken any decisions in relation to the implementation of the report or otherwise, the effectiveness of the report would be muted. This is because the advantage of a well-considered and planned response would be lost and instead the Executive Summary to the report would be considered in isolation, particularly among Defence personnel. In Mr Corcoran's view, this would diminish the ability of the Secretary and Chief of the Defence Force to develop a way forward.

15. Finally, Mr Corcoran found that, if the Executive Summary to the report were to be released before the Government or Defence has been able to develop a considered response to the report, there is the potential that Defence's management of current and former personnel would be unduly prejudiced.

16. Based on a consideration of these factors, Mr Corcoran decided that there is significant public interest in allowing the Government and Defence to fully and comprehensively consider and respond to the Executive Summary to the report before it is released intact.

17. Copies of the relevant sections of the FOI Act are at Enclosure 1.

Payment of Charges

18. In our letter, dated 13 March 2012, the department estimated the cost associated with processing your request to be $[Amount]. By email, dated 19 March 2012, you were advised that the preliminary assessment of FOI charges associated with your revised request was $[Amount]. You agreed to pay charges for the administration of your request and paid the preliminary assessment deposit of $[Amount] on 21 March 2012.

19. Upon completion of your request, the actual amount for processing was less than the 5 hours free decision making time; as such, you are entitled to a refund for the charges paid towards the processing of your request $[Amount]. To enable us to process your refund, could you please complete the form at Enclosure 2 and return it to the address on the form via email or post.

Rights of review


FOI Disclosure Log

21. 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 usually within two working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions. I will provide you with the date of publication on the disclosure log when it is known.
Further advice

22. 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 via the details at the top of this letter.

Yours sincerely

Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

15 May 2012

Enclosures:
1. Relevant sections of the Act
2. Freedom of Information Refund Processing Form