



Australian Government


Department of Defence

Office of the Secretary and
Chief of the Defence Force Group

Freedom of Information and
Information Management Branch
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Our reference: FOI 234/10/11



By email: 

Dear 

1. I refer to your email, dated 14 March 2011, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

"...the report by Noetic Solutions, and others if applicable, arising from the review of the ADF Retention and Recruitment Program and initiatives."

2. 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

3. Air Commodore Tony Needham, Director General Workforce Planning, People Strategies and Policy Group is the authorised decision maker, under the FOI Act, in relation to your request.

Identified documents

4. Air Commodore Needham identified the following documents as matching the scope of your request:

- a. *Evaluation of the Australian Defence Force Retention and Recruitment Program*, Noetic Solutions, May 2010;
- b. *Review of the Australian Defence Force Retention and Recruitment Program*, People Strategies and Policy Group, August 2010; and
- c. *Evaluation of the Australian Defence Force Gap Year*, Noetic Solutions, April 2010.

Decision

5. Air Commodore Needham decided to release the document identified at 4c. above intact and release the remaining two documents with deletions, in accordance with section 22 of the FOI Act, on the grounds that the deleted material is considered exempt under subparagraph 33(1)(ii) [documents affecting security, defence or international relations] and subparagraph 47G(1)(a) [Public interest conditional exemptions – business] of the FOI Act. Copies of the relevant sections of the FOI Act are at Enclosure 1.

Guidelines

6. In coming to his decision, Air Commodore Needham had regard to the guidelines issued by the Office of the Australian Information Commissioner, particularly in regard to conditional exemptions and the public interest.

Findings and reasons

7. The table at Enclosure 2 lists the deletions made from the documents identified as 4a. and 4b. above and the grounds for each deletion.

Section 33

8. Air Commodore Needham found that the documents identified as 4a. and 4b. above contained information which, if disclosed, would enable possible enemies of good government to obtain knowledge of preparedness levels of the Australian Defence Force.

9. In particular, Air Commodore Needham believes that such release would reveal Defence's preparation for armed conflict and its ability to support current and ongoing operations. Accordingly, Air Commodore Needham explained that this material is considered sensitive as it was prepared for the purpose of providing advice to the Chief of the Defence Force, the Secretary and Chiefs of Service concerning workforce issues that might impact upon operational capability.

Section 47G

10. Air Commodore Needham found that the documents identified as 4a. and 4b. above also contained material, which if released, would adversely affect a number of companies in respect of their lawful business and commercial affairs. Air Commodore Needham explained that the majority of the exemptions relate to companies' performance in providing services to Defence that are currently subject to re-tendering. Air Commodore Needham believes that disclosure of specific performance data may provide unfair advantage to the companies' competitors, while not adding substantively to the reader's understanding of the qualitative analysis that remains in the reports. On balance, Air Commodore Needham found that disclosure of this data is not in the public interest.

11. Finally, Air Commodore Needham found that one section of the document identified at 4a. above contained material which relates to a proprietary analytic methodology used by Noetic Solutions, who conducted the review. Noetic Solutions put forward an argument requesting that one diagram be removed from the document to protect their intellectual property rights. Air Commodore Needham has agreed to the request and believes it is not in the public interest to release the diagram on the basis that (i) the diagram is incidental to the reader's understanding of the report's recommendations and (ii) should the Commonwealth release it, companies with proprietary methodologies will be less likely to choose to work for the Commonwealth in the future due to the perceived risk to their intellectual property.

12. Air Commodore Needham advised that, in coming to his decision, he had turned his mind to the irrelevant factors and the factors favouring disclosure as outlined in section 11B of the FOI Act. His arguments relating to public interest are contained within paragraphs 10 and 11 above.

Contextual statement

13. Noetic Solutions Pty Limited was contracted to evaluate the progress and success of the ADF Retention and Recruitment (R2) Program, which was instigated by the Government of the day through decision in 2006 and 2007. In determining how best to approach the task, it was decided to conduct a separate evaluation of the ADF Gap Year Program due to its nature and scale, even though it could be considered just one among several R2 initiatives. Thus Noetic provided two reports rather than one.

14. Upon completion of Noetic's review, it was determined that a number of issues raised would bear further investigation. Consequently further analysis was conducted by Departmental staff – this constitutes the third report.

15. Noting that more time has passed between the two reviews, the internal report benefited from the availability of later data and in some cases, subsequent developments. For example, Noetic's finding that the Expanding Cadets initiative was not meeting the target for increasing cadet numbers, while consistent with the data available at the time, was subsequently contradicted by June 2010 data showing increases in cadet numbers. Other instances of apparent contradiction may become apparent as the documents are compared.

Payment of Charges

16. In our letter dated 18 February 2011, the department estimated the cost associated with processing your request to be [REDACTED] after taking into account the free decision making time. You agreed to pay charges for the administration of your request and paid the preliminary assessment deposit of [REDACTED] on 28 March 2011.

17. Upon completion of your request, the actual amount for processing exceeded the initial estimate, however, as detailed in paragraph 10 of our preliminary assessment of charges letter, the amount payable can only be more than the preliminary assessment if the decision is to release all of the documents requested in full.

18. Accordingly, you are required to pay [REDACTED] in order to finalise your request. Cheques or money orders should be made payable to the 'Receiver of Public Monies', and forwarded to the address at the top of this letter. Credit card payments can be made by completing the form at Enclosure 3 and returning it to the FOI Directorate.

Publicly available information released following an FOI access request

19. 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, within 10 working days of the applicant being given access to the documents. Members of the public may then request access to the released documents. The list published does not include publication of personal information about 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. Defence will also publish this decision notice, with privacy and business information deleted.

Rights of review

20. The FOI Act provides for rights of review of decisions. A copy of fact sheet "Freedom of Information – Your Review Rights" is at Enclosure 4.

Further advice

21. 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
Freedom of Information

20 May 2011

Enclosures:

1. Relevant sections of the FOI Act
2. Table of deletions
3. Credit card form
4. Fact Sheet: "Freedom of Information – Your Review Rights"

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

Section 22 of the FOI Act

Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Note: See also subsection 4(10).

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (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;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by

reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
 - (a) carries on the same occupation, of a kind mentioned in the definition of *qualified person* in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and,

without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

REDACTION TABLE

Review of the Australian Defence Force Retention and Recruitment Program, People Strategies and Policy Group, August 2010

Document Reference	FOI Act 1982 Reference	Comments
Volume 1 p 17 (top)	33(a)(ii)	Defence of the Commonwealth. Release would reveal Defence's preparation for armed conflict and its ability to support current and ongoing operations.
Volume 1 p 17 (bottom)	47G(1)(a)	Commercial affairs of an organisation. Deletion of performance information about a company which could potentially provide an unfair advantage to the company's competitors while not adding to the reader's understanding of the analysis.
Volume 1 p 18	47G(1)(a)	Commercial affairs of an organisation. Deletion of performance information about a company which could potentially provide an unfair advantage to the company's competitors while not adding to the reader's understanding of the analysis.
Volume 1 p 19	33(a)(ii)	Defence of the Commonwealth. Release would reveal Defence's preparation for armed conflict and its ability to support current and ongoing operations.
Volume 1 pp 21-22	33(a)(ii)	Defence of the Commonwealth. Release would reveal Defence's preparation for armed conflict and its ability to support current and ongoing operations.
Volume 2 p5	47G(1)(a)	Commercial affairs of an organisation. Deletion of performance information about a company which could potentially provide an unfair advantage to the company's competitors while not adding to the reader's understanding of the analysis.
Volume 2 p B1	33(a)(ii)	Defence of the Commonwealth. Release would reveal Defence's preparation for armed conflict and its ability to support current and ongoing operations.
Volume 2 p B3	47G(1)(a)	Commercial affairs of an organisation. Deletion of performance information about a company which could potentially provide an unfair advantage to the company's competitors while not adding to the reader's understanding of the analysis.
Volume 2 p B6	47G(1)(a)	Commercial affairs of an organisation. Deletion of performance information about a company which could potentially provide an unfair advantage to the company's competitors while not adding to the reader's understanding of the analysis.
Volume 2 p C1	33(a)(ii)	Defence of the Commonwealth. Release would reveal Defence's preparation for armed conflict and its ability to support current and ongoing operations.
Volume 2 p C2-C3	47G(1)(a)	Commercial affairs of an organisation. Deletion of performance information about a company which could potentially provide an unfair advantage to the company's competitors while not adding to the reader's understanding of the analysis.

Evaluation of the Australian Defence Force Retention and Recruitment Program, Noetic Solutions, May 2010

Document Reference	FOI Act 1982 Reference	Comments
p 17	47G(1)(a)	Commercial affairs of an organisation. Proprietary analytic methodology – diagram deleted to protect Noetic Solutions' intellectual property rights.
p 30	33(a)(ii)	Defence of the Commonwealth. Release would reveal Defence's preparation for armed conflict and its ability to support current and ongoing operations.
p 36	33(a)(ii)	Defence of the Commonwealth. Release would reveal Defence's preparation for armed conflict and its ability to support current and ongoing operations.
p 41	47G(1)(a)	Commercial affairs of an organisation. Deletion of performance information about a company which could potentially provide an unfair advantage to the company's competitors while not adding to the reader's understanding of the analysis.
pp 60-61	47G(1)(a)	Commercial affairs of an organisation. Deletion of performance information about a company which could potentially provide an unfair advantage to the company's competitors while not adding to the reader's understanding of the analysis.

Evaluation of the Australian Defence Force Gap Year, Noetic Solutions, April 2010

Document Reference	FOI Act 1982 Reference	Comments
No redactions made		



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Chief of the Defence Force Group

**Freedom of Information Request
Credit Card Payment Form**

Full Name		
Service or PMKEYS ID (if applicable)		
Postal Address:		
Contact Phone Numbers:	Ph:	Mob:
Email Address:		
FOI Reference (if known):		
ABN Number (if known):		
Payment for: <input type="checkbox"/> Deposit for charges (Please tick one box only) <input type="checkbox"/> Balance of charges		

Enter your credit card details, sign below and return this form via email to FOI.Inquiries@defence.gov.au or by post to the address below.

VISA

MASTERCARD

Card Number:

Expiry: ___/___ Amount: \$ _____

Name on Card: _____

Signature: _____

Once invoice has been issued you will be contacted by the FOI Directorate for the CCV number to enable the processing of your payment online.

* Due to personal security reasons, Defence will not accept this form via fax

Freedom of Information Directorate
Department of Defence
CPI-6-001
PO Box 7910
CANBERRA BC ACT 2600
Tel: (02) 6266 2200
www.defence.gov.au/foi



Freedom of information – Your review rights

If you disagree with the decision made by the Department of Defence or the Minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Defence, or external review by the Australian Information Commissioner.

Internal review

If Defence makes an FOI decision that you disagree with, you can ask Defence to review its decision. Generally the review will be conducted by the FOI Directorate, however in some instances it will be referred to the area that made the decision, but it will be conducted by someone at a more senior level. There is NO charge for internal review.

You must apply within 30 days of being notified of the decision, unless you have sought an extension from Defence.

Defence must make a review decision within 30 days. Where Defence has not met its review obligation, you may then approach the Information Commissioner.

Internal review is not available if the Minister or the principal officer of the agency made the decision personally.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points to which you are objecting and why.

You can lodge your application in one of the following ways:

Post: Freedom of Information Directorate
Department of Defence
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2600

Fax: +61 2 626 62122

Email: FOI.Inquiries@defence.gov.au

External Review

Do I have to go through the Defence's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the Defence internal review process gives Defence the opportunity to reconsider its initial decision and your concerns will most likely be addressed more quickly, without undergoing an external review process.

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the revised FOI Act, you must seek external review through the Information Commissioner prior to applying to the AAT for such a review.

Making a complaint

You may make a complaint to the Information Commissioner about actions taken by Defence in relation to your application. The complaint needs to be in writing.

Contacting the Information Commissioner

Further information about the external review process or how to make a complaint to the Information Commissioner is available at the following:

Online: www.oaic.gov.au
Post: GPO Box 2999, Canberra ACT 2601
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate, the complaint, then all relevant documents and information must be transferred to the Information Commissioner.

The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Defence FOI contacts

Freedom of Information Directorate
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CP1-6-001
PO Box 7910
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Ph: +61 2 626 62200
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