Dear [Redacted]

1. I refer to your email of 26 March 2012 in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

"... "COPY OF BRIEFING NOTES AND/OR RESPONSES PREPARED BY OR FOR RESPECTIVE CASAC MEMBERS RELATING TO THE "LATEST POLICY ON WEARING BERETS" REQUIRED TO HAVE BEEN PROVIDED TO THE CA BY 16 JUN 10 AS PER THE MINUTES OF CASAC MEETING OF 11 JUN 2010"."

Background

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

3. Your request fell due on the ANZAC Day public holiday, in accordance with the FOI Guidelines issued by the Australian Information Commissioner, if the last day for notifying a decision falls on a Saturday, Sunday or a public holiday, the timeframe will expire on the first day following which is none of those days. As such, the due date for you to receive a response expires today 26 April 2012.

FOI decision maker

4. Mr Rod Dudfield, Director Freedom of Information, is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

5. Mr Dudfield identified 3 emails and two draft minutes which match the scope of your request, identified below:

a. Email of Monday, 14 June 2010 17:56 – RE: Wearing of Head Dress
   i. attachment: Draft Minute - Wearing of Headdress - CASAC decision -
b. Email of Tuesday, 15 June 2010 17:57 - RE: Wearing of Head Dress.

c. Email of Wednesday, 16 June 2010 16:54 - RE: Berets

i. attachment: Draft Minute - Wearing of Headdress - CASAS decision.doc

Material taken into account

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

- The content of the identified documents
- 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)
- Research Mr Dudfield undertook on the internet

Decision

7. Mr Dudfield has decided to release the identified documents with material deleted, in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 47F of the FOI Act. His reasons for the deletions are set out below. Please find the relevant sections of the FOI Act at Enclosure 1.

Reasons for decision

8. After examining the documents Mr Dudfield found that they contained personal information of current serving Army members, such as their names, ranks and titles/positions as well as their respective response for the then Chief of Army’s consideration. The issue of the wearing of berets remains a sensitive issue with serving members of the Army and with some members of the public, particularly former soldiers. While media reporting on the decision to ban the wearing of berets in all but a few Army Regiments has waned, a review of the Internet indicates that the topic of wearing of berets remains the focus of numerous Army association and Unit internet sites, forums, blog sites and YouTube commentary. As such, Mr Dudfield considered that the actual content of the identified documents contains information which may be of continuing interest to the public, however, the disclosure of names, ranks and positions/titles will not, in his opinion, further public debate on this issue. Furthermore, the removal of names, ranks and positions/titles doesn’t detract context or any information from the document; as such Mr Dudfield believes nothing is lost in exempting personal information under section 47F of the FOI Act.

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

a. the extent to which the information is well known;
b. whether the person’s 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, Mr Dudfield found that:
a. the specific personal information is not well known to the general community; and
b. this specific information is not readily available from publicly accessible sources.

11. Noting the findings of the above criteria, Mr Dudfield decided that the disclosure of this information would be an unreasonable disclosure of personal information belonging to other people. In making this decision Mr Dudfield took into account the guidelines published by the Office of the Australian Information Commissioner in particular section 6.140 which states:

A document may, however, be exempt for another reason, for example, where disclosure would, or could reasonably be expected to, endanger the life or physical safety of any person (s 37(1)(c)). In addition, where an individual has a propensity to pursue matters obsessively and there is no need for them to contact a particular public servant in the future, disclosure of the public servant's name may be unreasonable.

12. In considering this guidance Mr Dudfield took into account the continuing emotion and comments related to the topic of wearing berets. Mr Dudfield also considered the fact that those whose details have been conditionally exempted under section 47F compiled feedback gathered from within Army and subsequently reported those comments under direction as ordered, and that the comments reported may not necessarily be attributed to the author or be their own opinion. As such, Mr Dudfield considered that it would be unreasonable to release the names, ranks and positions/titles of those involved in compiling the documents, as to do so may bring unwarranted contact and potentially harassment to those involved.

13. Accordingly Mr Dudfield considered the material to be conditionally exempt under section 47F of the FOI Act.

Public Interest considerations – section 47F

14. Subsection 11A(5) [access to documents on request] of the FOI Act requires 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.

15. In assessing whether the disclosure is, on balance, contrary to the public interest, Mr Dudfield considered the relevant factors set out in section 11B(3) [public interest exemptions – factors] of the FOI Act, which favours access to the documents. Mr Dudfield noted that disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

16. Mr Dudfield noted that the information may be of interest to you, but, it would not inform public debate on any matter of public importance in a meaningful way. Additionally it would not promote oversight of public expenditure.

Factors favouring disclosure

17. Mr Dudfield found that the documents in question contained personal and professional opinions. Mr Dudfield believed that these opinions both personal and professional should be released as the subject matter discussed is in the public interest. They show that deliberation did take place in Army Headquarters prior to the implementation of the new policy governing the wearing of berets; a point which is being questioned by members of the public and by current
serving Army members. As such, Mr Dudfield believed that the documents should be released to you, with the above mentioned exemptions, under section 47F.

Payment of Charges

18. In our letter dated 3 April 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]. The remaining balance is the difference between actual charges [Redacted] and the deposit you have already paid [Redacted].

19. 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 the remaining charges and will enable 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


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 within two working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

Further advice

22. Should you have any questions in regard to this matter please contact this office.

Yours sincerely

[Redacted]

Elliott Bator
Case Manager
Freedom of Information

26 April 2012

Enclosures:
1. Relevant sections of the Act
2. Freedom of Information Payment Agreement form.