



Australian Government

Department of Defence

Office of the Chief Operating Officer

Freedom of Information and
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Our reference: FOI 280/11/12

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

1. I refer to your email, dated 27 April 2012, received on 30 April 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

"...documents regarding a Defence Security Authority (DSA) investigation into claims made by US citizen Gwennyth Todd and her husband, Australian Navy CAPT [REDACTED], regarding interference of a US FBI agent.

Specifically, I seek access to a final report or similar document generated as a result of that investigation, into allegations raised by [REDACTED] with DSA that a US FBI agent, William Spencer, lied about his identity in order to get into the couple's Canberra house in February 2011."

FOI Statutory deadline

2. Your request was registered, on receipt of your request, on 30 April 2012. The FOI processing time was suspended on 2 May 2012, when you were advised of the preliminary assessment of FOI charges associated with the processing of your request. By email, dated 29 May 2012, you sought waiver of the estimated charges. By emailed letter, dated 2 July 2012, I relayed my decision declining your waiver request. On 3 July 2012 you paid the estimated charges amount in full and the FOI processing time recommenced.

3. In an email, dated 30 July 2012, you were advised of the requirement to consult a number of parties in accordance with section 27A [consultation – documents affecting personal privacy] and subsection 15(7) [requests for access] of the FOI Act. You were also advised that, in accordance with subsections 15(6) and 15(8) of the FOI Act, that the deadline had been extended and would expire on 29 September 2012. However, in my email I also advised that the new due date was a Saturday and 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 on 1 October 2012.

4. The purpose of this letter is to provide you with the decision relating to the documents that are the subject of your request. I am pleased to provide this decision ahead of the statutory deadline.

FOI decision maker

5. Mr Mark Hill, Intelligence and Security Group is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

6. Mr Hill identified four documents as matching the scope of your request, as follows:

- Document 1 – Investigation Report – IR-DSA01-SIC-2011-203
- Document 2 – Email to DSA containing allegations;
- Document 3 – Forwarded email containing allegations; and
- Email response to Media inquiry

Decision

7. Mr Hill decided to release the identified documents with material removed, in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, as the material is considered exempt under sections 33 [documents affecting national security, defence or international relations] and 47F [public interest conditional exemptions – personal privacy] of the FOI Act.

Material taken into account

8. In making his decision Mr Hill had regard to:

- The terms of your request;
- The contents of the documents in issue;
- Consultation responses from third parties consulted in accordance with the FOI Act;
- Relevant provisions of the FOI Act;
- Defence guidance material on the FOI Act; and
- The guidelines published by the Office of the Australian Information Commissioner under section 93A [guidelines] of the FOI Act (the guidelines).

Subparagraph 33(a)(iii)

9. Mr Hill found that disclosure of certain information contained within the documents would cause, or could reasonably be expected to cause, damage to the international relations of the Commonwealth, namely, releasing specific methods of operation by the United States Federal Bureau of Investigation. As such, Mr Hill was satisfied that the deleted material contained within the documents is exempt subparagraph 33(a)(iii) of the FOI Act.

Subsection 33(b)

10. Mr Hill found that certain information contained in Document 1 was communicated in confidence to the Commonwealth by a foreign government. He considered that its release would diminish the confidence in Defence as a reliable recipient of confidential information and result in that country being less willing to cooperate with Defence in the future. Consequently, Mr Hill was satisfied that the deleted material contained in Document 1 is exempt under subsection 33(b) of the FOI Act.

Section 47F

11. Mr Hill advised that after examining the documents, he found that they contained personal information, including, but not limited to, names, ranks, home addresses and work details of a number of people, the release of which, he considered would involve the unreasonable disclosure of other people's personal information.

12. In accordance with subsection 47F(2) of the FOI Act, in determining whether the release of this information would involve the unreasonable disclosure of personal information, Mr Hill has 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.

13. Against the preceding criteria, Mr Hill found that:

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

14. Noting the findings of the above criteria, Mr Hill decided that the release of this information would be an unreasonable disclosure of personal information belonging to other people. Accordingly, Mr Hill considered the material to be conditionally exempt under section 47F of the FOI Act.

Section 47F – public interest considerations

15. 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.

16. In assessing whether the disclosure is, on balance, contrary to the public interest, Mr Hill considered the relevant factors set out in subsection 11B(3) [public interest exemptions – factors] of the FOI Act, which favours access to the documents. Mr Hill 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, Mr Hill considered that disclosure of the identified personal information 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 your own personal information.

17. In coming to his decision, Mr Hill took into account the responses from third parties, who were consulted with regard to their personal information in the documents. Mr Hill also took into account that release of any of the personal information could cause unnecessary stress on the third parties.

18. Taking all of the above into consideration, Mr Hill decided to exempt the identified personal information under section 47F of the FOI Act.

Other information

19. In coming to his decision, Mr Hill noted that the Australian Federal Police (AFP) were referred to in the documents. As such, Mr Hill decided to informally consult with the AFP before making his final decision. The AFP did not object to the proposed disclosure of the identified documents, however, they provided the following supplementary information to provide context:

“...In relation to the actual content I would like it noted that there is a reference to the AFP International Network having received prior notice of the FBI's intended activities, while International may have been aware of these activities in a general sense I am confident that the AFP would not have known that the FBI member was going to pass himself off as a consular official. AFP International did not know that this would occur and were not consulted in relation to this aspect of the FBI's activities.”

Payment of Charges

20. As outlined in paragraph 2 above, I made a decision on 2 July 2012, not to reduce or waive the charges associated with your request. You agreed to pay the charges for the processing of your request on 3 July 2012, paying the estimated amount in full. Accordingly, the charges were imposed.

21. Upon completion of your request, the actual amount for processing exceeded the initial estimate. However, as explained in my letter, dated 2 May 2012, the amount payable can only be more than the preliminary assessment if the decision is to release all of the requested documents in full.

22. Accordingly, there is no outstanding charges payable in respect to this request.

Release of documents

23. For ease of reference and for the purposes of processing this request, I have annotated the documents with the FOI number and number of each document as referenced in paragraph 6 above. Copies of the documents in the form approved for release are at Enclosure 1.

Rights of review

24. 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 2.

FOI Disclosure Log

25. 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, except in certain circumstances. Mr Tony Corcoran, Assistant Secretary Freedom of Information and Information Management has delegated authority with regard to decisions relating to publication. Mr Corcoran has decided on this occasion not to publish the decision and documents on the FOI Disclosure Log as it would involve an unreasonable publication of the personal information of a number of parties.

Further advice

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

27. This completes all action on your request. Should you have any queries about 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

21 September 2012

Enclosures:

1. Documents in form approved for release
2. Fact Sheet: Freedom of Information – Your Review Rights