



Our reference: FOI 139/13/14

By email: [foi+request-437-3916f04b@righttoknow.org.au](mailto:foi+request-437-3916f04b@righttoknow.org.au)

Dear Ms Marlow

## **NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST**

1. I refer to your email, dated 8 October 2013, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

*“Item 1 - all initial environmental impact assessments undertaken by, or on behalf of, Australia and/or the US Navy for the Mobile User Objective System ground station at Kojarena WA.*

*Item 2 - all records of environmental monitoring of the MUOS installation since it commenced operation.”*

### **Background**

2. On 10 October 2013, our office wrote to you to advise of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. Your letter agreeing to pay charges for the processing was received in this office on 25 October 2013. As such, the statutory processing time for your request expires on 22 November 2013.

3. 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**

4. Mrs Sarah Brown, Director Environmental Remediation Programs, Infrastructure Division, Defence Support and Reform Group is the accredited decision maker, under the FOI Act, in relation to your request.

### **Documents identified**

5. Mrs Brown identified one document as matching the description of your request.

## Decision

6. Mrs Brown has decided to:
- a. release one document intact; and
  - b. refuse access to item 2 of the request under subparagraph 24A(1)(b)(ii)[Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

## Material taken into account

7. In making her decision Mrs Brown had regard to:
- a. the terms of the request;
  - b. the content of the identified document in issue;
  - c. relevant provisions in the FOI Act;
  - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);
  - e. the Principles on open public sector information issued by the Information Commissioner; and
  - f. advice received from officers within the department.

## Reasons for decision

8. Mrs Brown has refused access to item 2 of the request, under section 24A(1)(b)(ii) [documents do not exist] of the FOI Act. Section 24A(1) of the FOI Act states:

### **24A Requests may be refused if documents cannot be found, do not exist or have not been received**

#### *Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.
9. Paragraph 8.41 of the Guidelines also gives guidance as to what is required to be included within this statement of reasons to refuse a request under section 24A(1);

*8.41 The statement of reasons given to the applicant should sufficiently identify the document and give reasons as to why it cannot be found or why it is known that it no longer exists. The statement should describe the steps the agency took to search for it.*

10. Departmental advice indicates that no documents will exist as the Mobile User Objective System (MUOS) facility is not yet operational.

11. In light of this, Mrs Brown can not grant access to the requested documents under section 24A(1)(b)(ii) of the FOI Act.

### **Payment of Charges**

12. In our letter, dated 10 October 2013, after deducting the free decision making time, the department estimated the cost associated with processing your request to be \$126.10. You agreed to pay charges for the administration of your request on 25 October 2013, an invoice for the preliminary assessment deposit of \$31.50 was subsequently sent directly from Defence Finance.

13. Upon completion of your request, after deducting the free decision making time, the actual amount for processing was calculated to be \$32.50. The remaining balance is the \$1.00 upon completion of your request, Ms Andrea Sansom, Assistant Director Freedom of Information, decided not to impose the remainder of the FOI processing charge.

### **Rights of review**

14. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights" is at Enclosure 2.

### **FOI Disclosure Log**

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

### **Further advice**

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

17. Should you have any questions, please contact this office.

Yours sincerely



Bree Faehrmann  
Case Manager  
Freedom of Information

13 November 2013

Enclosures:

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