



Australian Government

Department of Defence

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ASFOIIM/OUT/2013/233
FOI 139/13/14

23 December 2013

Ms Julie Marlow

By e-mail: foi+request-437-3916f04b@righttoknow.org.au

Dear Ms Marlow

Application for *internal review*

1. I refer to your application for *internal review*, under section 54 of the *Freedom of Information Act 1982* (FOI Act), of the decision by Mrs Sarah Brown, Director Environmental Remediation Programs, Infrastructure Division, Defence Support and Reform Group, to release a document to you in regard to Item 1 of your request and to refuse you access to '*records of environmental monitoring of MUOS installation since it commenced operation*' under Item 2.

Documents subject to *internal review*

2. Your FOI request was taken as seeking access to two separate items. **Item 1** of your request was for access to '*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*'. Mrs Brown identified one document as captured by **Item 1** of your request, which was a *Final Report - Department of Defence - Mobile User Objective System (MUOS), Western Australia - Initial Environmental Review* prepared by Environmental Resources Management Australia dated 31 August 2006 and which was released to you intact.

3. In relation to **Item 2** of your request, for '*all records of environmental monitoring of the MUOS [Mobile User Objective System] installation since it commenced operation*', access was refused to the document(s), under section 24A [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act, on the grounds that the MUOS facility is not yet operational and, as such, no documents exist.

Contentions raised in your application for *internal review*

4. In the application for *internal review*, you advised that the decision provided to you in response to **Item 1** of the request makes no mention of relevant US documents.
5. In regard to **Item 2**, you contended that the facility should have been in operation according to Defence media releases.

Reviewing officer

6. I am authorised to make this decision under arrangements approved by the Secretary of the Department of Defence under section 23 of the FOI Act.

Decision

7. I uphold the original decision by Mrs Brown to release one identified document under **Item 1** and to refuse access to **Item 2** from disclosure under section 24A(1) of the FOI Act because documents do not exist.

Material taken into account

8. In arriving at my decision, I had regard to:
 - a. the outcome of searches conducted, and information provided, by the relevant area;
 - b. the relevant provisions of the FOI Act; and
 - c. the *Guidelines issued by the Australian Information Commissioner under section 93A of the Freedom of Information Act 1982*.

Findings and reasons for the decision

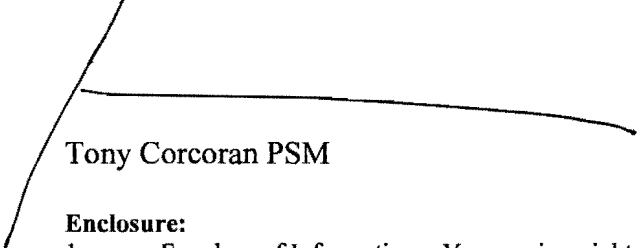
9. In relation to **Item 1**, I conducted fresh searches and can confirm that the Australian Department of Defence has not received an Environmental Impact Study from the US Navy. There are no documents that fit your request other than the document you received intact.
10. In relation to your supposition that a US Navy document relating to the environmental aspects of the MUOS is in existence, I can only suggest that you direct any further inquiries through the FOI process run by the US Navy.
11. In relation to **Item 2**, I have re-checked with the area and can confirm that the MUOS is not operational, therefore no documents exist.
12. In my view, all reasonable steps have been undertaken by this department with no relevant documents discovered. In light of the above, access to the requested documents is refused in accordance with section 24A(1) of the FOI Act, as I am satisfied that documents do not exist.

Rights of Review

13. The FOI Act provides for rights of reviews of decisions. A copy of the fact sheet "Freedom of Information – Your Review Rights" setting out your rights of review is at Enclosure 1.

14. If you have any questions in relation to this matter please contact me

Yours sincerely



Tony Corcoran PSM

Enclosure:

1. Freedom of Information – Your review rights.



Australian Government

Department of Defence

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Defence under the Freedom of Information Act 1982 (the FOI Act), you can ask for the decision to be reviewed. You can ask for external review by the Australian Information Commissioner.

External review

The Information Commissioner is an independent office holder who can review the decisions of agencies under the FOI Act.

Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:
Online: www.oaic.gov.au
Post: GPO Box 2999, Canberra ACT 2601
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3,
175 Pitt Street,
Sydney, NSW 2000

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, you must apply to the Information Commissioner within 60 days of being given notice of the decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at the searches conducted to identify documents captured by the request?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including details of searches conducted by an agency to establish if documents exist. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true. An agency can also be ordered to undertake further searches for documents.

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 and lodged in one of the ways indicated above under the heading "How do I apply".

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.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things: set the decision aside and make a fresh decision; affirm the decision, or vary the decision. The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the Administrative Appeals Tribunal (AAT). The Information Commissioner will not be a party to those proceedings. The fee for lodging an AAT application is \$777 (at November 2010), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.