



AFP

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Our Ref: LEX 2675

24 January 2025

Mr James Smith
Email: foi+request-11378-f7b2583e@righttoknow.org.au

Dear Mr Smith

Freedom of Information request - revised decision - section 55G of the Freedom of Information Act 1982

The purpose of this letter is to provide you with a revised decision on your request for access to documents under the *Freedom of Information Act 1982* (the Act).

Attached at Annexure A to this letter is my decision and statement of reasons for that decision. A schedule of documents identified as falling into the scope of your request is at Annexure B.

I have decided to publish the documents in part in respect of your request. Publication of the documents will be made on the AFP website at <https://www.afp.gov.au/about-us/information-publication-scheme/routinely-requested-information-and-disclosure-log> in accordance with timeframes stipulated in section 11C of the Act.

Yours sincerely

Bella
A/Team Leader
Freedom of Information
Chief Counsel Portfolio

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**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
JAMES SMITH**

I, Bella, A/Team Leader, Freedom of Information, am an officer authorised under section 23 of the *Freedom of Information Act 1982 (Act)* to make decisions in relation to the Australian Federal Police (AFP). What follows is my decision and reasons for the decision in relation to your request.

A. BACKGROUND

1. On 1 May 2024, the AFP received your request in the following terms:
"I request documents relating to interagency information management and sharing frameworks, policies, procedures, rules, guidelines, or processes insofar as they relate to investigations into allegations of war crimes by Australian Defence Force personnel in Afghanistan."
2. On 29 May 2024, you agreed to a 30 day extension of time pursuant to section 15AA of the Act.
3. On 1 July 2024, you revised the scope of your request to the following terms:
"Final versions of the frameworks, policies, procedures, rules, guidelines and processes the AFP currently use that relate to interagency information management and sharing and the allegations of war crimes by Australian Defence Force personnel in Afghanistan."
4. You sought review of the deemed decision by the Office of the Australian Information Commissioner (OAIC). On 1 November 2024, the OAIC issued a direction to the AFP to make any revised decision under section 55G of the Act by 22 November 2024.
5. On 28 November 2024, the AFP sent you an email advising additional documents were located in response to your request which required consultation with Commonwealth agencies. The AFP sought your agreement for a staged release of documents. The AFP did not receive a response to this correspondence.
6. As your matter with the OAIC remains in progress, the OAIC will be notified that a decision has been issued to you. I will provide the OAIC with a copy of this revised decision.
7. I sincerely apologise for the delay in the processing of your request.

B. SEARCHES

1. Searches for documents were undertaken by the following areas within the AFP:
 - Special Investigations;
 - General Counsel Operations; and
 - Commander of the Office of Special Investigator.

C. WAIVER OF CHARGES

1. Given the request has exceeded all statutory timeframes as outlined at section 15 of the Act, the AFP is not able to impose any fees or charges as outlined at Regulation 5(2) & (3) of the *Freedom of Information (Charges) Regulations 1982*.

D. EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

1. In reaching my decision, I have relied on the following:
 - (a) the scope of your request;

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- (b) the contents of the documents identified as relevant to the request;
- (c) consultation with relevant Commonwealth agencies;
- (d) advice from AFP officers with responsibility for matters contained in the documents;
- (e) the Act; and
- (f) the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the Act.

E. DECISION

1. I have identified six (6) documents relevant to your request.
2. I have decided to:
 - (a) release 5 documents in part with deletions pursuant to sections 22(1)(a)(ii), 37(2)(b), 47E(c) and 47E(d);
 - (b) refuse access to 1 document pursuant to section 37(2)(b); and
 - (c) refuse access to further documents pursuant to section 25 of the Act.
3. My reasons for this decision are set out below.

REASONS FOR DECISION

Material to which section 22(1)(a)(ii) applies:

1. Section 22 of the Act allows the AFP to grant access to an edited copy of a document that has been modified by deletions to remove material that is either exempt or irrelevant to the request.
2. Parts of the document contain information that does not relate to the subject matter of your request, specifically information not related to interagency information management and sharing.
3. Accordingly, I find parts of the document would be reasonably regarded as irrelevant to the request under section 22(1)(a)(ii) of the Act.

Material to which section 25 applies:

4. Section 25 of the Act allows agencies to refuse access without confirming or denying the existence of a document where a document, if existed, would be exempt under section 33 (documents affecting national security, defence or international relations) or section 37(1) (documents affecting enforcement of law and protection of public safety).
5. On that basis, apart from:
 - (a) the file made up for your FOI request and identified documents; and
 - (b) documents which, if they existed, could affect national security, defence or international relations or the enforcement of law and protection of public safety
6. I refuse access in relation to your request, on the basis I neither confirm nor deny the existence further documents are held by the AFP.

Material to which section 37(2)(b) applies:

7. Section 37(2)(b) of the Act provides that:

“(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

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- (a) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;*"
8. The documents or parts of documents identified as exempt under this section of the Act contain information that would disclose methods and procedures used by the AFP and relevant Commonwealth agencies on interagency information management and sharing.
9. Specifically, the documents contain information about the lawful methods, procedures and resources available to the AFP in the management of information that is not commonplace or well-known to the public. Some of the methods and procedures may be the subject of speculation, but disclosure would confirm the methods and resources available to law enforcement officers, and the methods upon which the AFP relies on in Operation Emerald investigations.
10. In my view, the expectation that disclosure of the documents would result in prejudice is reasonable because the methods and procedures used by the AFP and relevant agencies collectively would divulge information not generally known. If the information in the documents were known it could give insight which may be used to obtain an advantage through the use of unlawful behaviour to further criminal conduct.
11. Accordingly, I find that the documents or parts of the documents are exempt under section 37(2)(b) of the Act.

Material to which section 47E(c) applies:

12. Section 47E(c) of the Act provides that:

"A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (b) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency."*

13. The FOI Guidelines at paragraph [6.103] state the following in respect of section 47E(c):

"For this conditional exemption to apply, the document must relate to either:

- *the management of personnel – including broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and work health and safety*
- *the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression." (footnotes omitted)."*

Staff names

14. Parts of the document have been identified as being exempt under section 47E(c). This material contains the names of public servants of other Commonwealth agencies and AFP appointees below SES level. These names are not publicly known.
15. The information I have identified as conditionally exempt could publicly identify staff not only as working for the agencies, but their work location and activities. The public disclosure of this information could expose those appointees to unwelcome behaviour from hostile actors.

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16. Furthermore, I have identified signatures of Commonwealth personnel. Releasing the signatures of Commonwealth personnel may place them at risk of forgery and impersonation. Releasing this information could have a substantial adverse effect on the management of personnel within the AFP on the basis that they present risks to the safety, wellbeing and morale of Commonwealth appointees.
17. Law enforcement employees have been a target of planned and actual attacks in Australia. AFP appointees have also been the target of attempts to obtain information. Publicly identifying a person as an AFP appointee could also compromise the ability of some to work in operational areas which require them to have no public profile.
18. These risks are not far-fetched, and need to be considered in the context that information released under FOI can be easily published online, and made widely available. On the basis that they present risks to the health and safety, wellbeing, morale and career development of AFP appointees, I am satisfied that release this information could have a substantial adverse effect on the management of personnel within the AFP.
19. However, I must give access to this information unless, in the circumstances, access at this time would be contrary to the public interest.
20. I have considered the following factors favouring disclosure:
 - (a) the general public interest in access to documents as expressed in sections 3 and 11B of the Act; and
 - (b) the public interest in people being able to scrutinise the operations of a government agency and in promoting governmental accountability and transparency.
21. I have considered the following factor against disclosure:
 - (c) prejudice to the safety, welfare and morale of AFP personnel;
 - (d) release may have a substantial adverse effect on the management of personnel in future.
22. Ultimately, while there is a public interest in providing access to documents held by the AFP, consequently, I have given greater weight to factors (c) and (d) above, and conclude that on balance, disclosure is not in the public interest. I consider the need to ensure the safety of Commonwealth personnel, and the AFP's ability to support and manage Commonwealth personnel weighs against disclosure.
23. Accordingly, I find those parts of the document identifying Commonwealth staff names and signatures are exempt under section 47E(c) of the Act.

Material to which section 47E(d) applies:

24. Section 47E(d) of the Act provides that:

"A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency;..."*

25. The documents or parts of documents identified as exempt under this section of the Act contain information, the release of which, would have a substantial adverse effect on the conduct of AFP operations – specifically, the AFP's expected functions as a law enforcement agency.

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26. The AFP performs statutory functions relating to public safety, and the protection of the public (and property) from criminal acts or otherwise. The information identified as exempt under this section of the Act provides details relevant to the AFP's processes in ensuring public safety, revealing how information is obtained, shared and actioned for the purposes of protecting the public and investigating war crimes. I am of the view that disclosure of the information could reasonably be expected to have a substantial adverse effect on the proper and efficient execution of those functions.
27. Furthermore, the information redacted under this section of the Act reveals internal AFP and Commonwealth agency email addresses and contact details. These contact details are not widely known and to disclose this information would impact on the AFP and Commonwealth agencies day to day operations by resulting in the diversion of AFP resources to responding to unsolicited correspondence received through those points of contact. Public release of this information would expose the agency to the diversion of external enquiries and possible vexatious communication from the established communication channels, thereby adversely impacting agency operations.
28. However, I must give access to this information unless, in the circumstances, access at this time would be contrary to the public interest.
29. I have considered the following factors favouring disclosure:
- (a) the general public interest in access to documents as expressed in sections 3 and 11B of the Act; and
 - (b) the public interest in people being able to scrutinise the operations of a government agency and in promoting governmental accountability and transparency.
30. I have considered the following factors against disclosure:
- (c) the need for the agency to maintain the efficiency of current procedures;
 - (d) that if information concerning internal contact details were revealed, it may have a substantial adverse effect on the conduct of AFP operations in the future; and
 - (e) if such information was disclosed, it would divert AFP resources from the proper conduct of their expected operations.
31. While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (c) to (e) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure public safety during police operations and the effectiveness of current procedures. Accordingly, I find that the documents or parts of the documents are exempt under section 47E(d) of the Act.

REVIEW RIGHTS

In accordance with section 55G(2)(b) of the Act, the Information Commissioner must deal with your IC review application for review of the original decision as if it were an IC review application for the review of this revised decision.

If you are dissatisfied with my revised decision, you may advise the OAIC that you do not wish to withdraw your application for IC review. If you are satisfied with my revised decision, please advise the OAIC that you withdraw your application for IC review.

COMPLAINT RIGHTS

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If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can make a complaint to the IC. A complaint may be lodged using the same methods identified above. It would assist if you set out the action you consider should be investigation and your reasons or grounds.

More information about IC reviews and complaints is available on the OAIC's website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

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SCHEDULE OF DECISION – LEX 2675
RELEASE OF DOCUMENTS – James Smith

Document No	Folio No	Author	Description	Decision	Exemption
1	1-19	Australian Federal Police (AFP) and Office of the Special Investigator (OSI)	Memorandum of Understanding	Release in Part	Section 22(1)(a)(ii) Section 47E(c)
2	20-22	OSI	Letter to Mr James Gaynor from Chris Moraitis PSM dated 2 September 2021	Release in Part	Section 22(1)(a)(ii) Section 47E(c) Section 47E(d)
3	23-26	AFP OSI DFAT	DFAT Sensitivity Review of Operation Emerald Material	Release in Part	Section 47E(d) Section 47E(c)
4	27-30	AFP OSI DFAT	Information Sharing Protocol – DFAT Support to OSI and AFP joint investigative activities	Release in Part	Section 47E(d) Section 47E(c)
5	31-79	AFP	Standard Operating Procedure	Exempt in full	Section 37(2)(b)
6	80-171	AFP Defence OSI	Protocols for Referrals, Information Sharing and Communications in the Context of Operation Emerald. Version 4.0.	Release in Part	Section 22(1)(a)(ii) Section 37(2)(b) Section 47E(c) Section 47E(d)