



**Australian Government**

**Office of the Special Investigator**

OSI reference: FOI24/14; ACON24/29

8 August 2024

Mr James Smith

By email: [foi+request-11649-8a38209e@righttoknow.org.au](mailto:foi+request-11649-8a38209e@righttoknow.org.au)

Dear Mr Smith

### **Freedom of Information Request FOI24/14 – Decision letter**

The purpose of this letter is to provide you a decision in relation to your request for access to documents under the *Freedom of Information Act 1982* (FOI Act) which you submitted to the Office of the Special Investigator (OSI).

### **Background**

On 8 July 2024, you submitted your request to the OSI. You requested to access:

*All materials relating to any breaches or contraventions of any information sharing protocol, MOU, communication arrangement or similar between AFP, OSI, “Operation Emerald”, DFAT, IGADF, AGD “Special Counsel”, Defence and/or CDP.*

On 22 July 2024, the OSI acknowledged your request.

A decision in relation to your request is due on 8 August 2024.

### **My decision**

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests made to the OSI.

I have decided that the OSI is required or authorised by section 25 of the FOI Act to neither confirm the existence or non-existence of documents falling within the scope of your request. This is because the documents you have requested to access are, or would be, exempt by virtue of section 37(1) of the FOI Act.

In making my decision, I have considered:

- the terms of your request.
- the content of any documents that are, or would be, within the scope of your request.
- relevant provisions of the *Freedom of Information Act 1982* (FOI Act).
- the Australian Privacy Principle Guidelines published by the Australian Information Commissioner (the APP Guidelines).
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

The reasons for my decision are below.

## Statement of reasons

### **Section 25: Access to edited copies with exempt or irrelevant matter deleted**

Section 25 of the FOI Act provides that:

- (1) *Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be:*
- (a) *an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or*
  - (b) *an exempt document to the extent referred to in subsection 45A(2) or (3).*

I have decided the documents you have requested to access are, or would be, exempt by virtue of section 37(1) of the FOI Act.

### **Section 37: Documents affecting enforcement of law and protection of public safety**

Section 37(1) of the FOI act provides that a document is an exempt document if its disclosure would, or could reasonably be expected to:

- (a) *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;*
- (b) *disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or*
- (c) *endanger the life or physical safety of any person.*

In applying exemption 37(1)(a), paragraph 5.98 of the Guidelines provide that:

*To be exempt under ss 37(1)(a) or 37(1)(b), the document in question should have a connection with the criminal law or the processes of upholding or enforcing civil law or administering a law. This is not confined to court action or court processes, but extends to the work of agencies in administering legislative schemes and requirements, monitoring compliance, and investigating breaches. The exemption does not depend on the nature of the document or the purpose for which it was brought into existence. A document will be exempt if its disclosure would or could reasonably be expected to have one or more of the consequences set out in the categories listed above at [5.95].*

The documents you have requested to access contain, or would contain, information relating to the conduct of an investigation of a breach, or possible breach, of the law, or would prejudice the enforcement, or the proper administration, of the law in a particular instance. I am satisfied the disclosure of any documents, if they existed, would, or could reasonably be expected to, prejudice the conduct of a current or pending investigation.

## Your rights

If you are unhappy with the way we have handled this FOI request, you can make an FOI complaint to the Information Commissioner.

More information about making an FOI complaint is available on the Office of the Australian Information Commissioner (OAIC) website: <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints>.

## Your review rights

If you are unhappy with this decision, you can apply for an internal review or Information Commissioner review. You should ask the OSI for an internal review as a first step.

### Internal review

Applications for internal review must be made:

- within 30 days of the date of this letter
- lodged by email to: [foiandprivacy@osi.gov.au](mailto:foiandprivacy@osi.gov.au).

You should also explain why you believe the internal review is needed.

### Information Commissioner review

You can apply to the Information Commissioner for review of this decision. An application for review by the Information Commissioner must be made to the OAIC:

- within 60 days of the date of this decision letter
- be made in writing – for further information access:
  - [Apply for an Information Commissioner review](#)
  - [Your freedom of information rights](#).

## Questions about this decision

If you wish to discuss this response for any reason, please contact me by email to [foiandprivacy@osi.gov.au](mailto:foiandprivacy@osi.gov.au).

Yours sincerely,



Caroline Shirley

Director, Communication  
Office of the Special Investigator