



Our Ref: LEX 3103

1 October 2024

Sean (Right to know)

By Email: foi+request-11573-f9cc3515@righttoknow.org.au

Internal review of Freedom of Information decision – my ref LEX 2983

I refer to your email of 3 September 2024, seeking internal review of the AFP's decision made on 27 August 2024 under the *Freedom of Information Act 1982* (the Act). I am an officer authorised to make internal review decisions under the Act.

A. BACKGROUND

1. On 30 July 2024, you sought access to the following:

A list of all internet domains seized or taken down by the AFP, or by another law enforcement agency in a joint international law enforcement operation involving the AFP, from 1 January 2020 to 30 July 2024.

For example, this request includes domains such as:

- "warzone.ws" and "breachforums.is" (seized by the FBI in joint operations with the AFP)*
- The domain associated with LabHost, taken down in Operation Nebulae (referenced in the AFP media release: <https://www.afp.gov.au/news-centre/media-release/global-sting-sees-australian-offenders-arrested-cybercrime-and-phishing>)*
- Any other domains where a "takedown notice" or similar message was displayed by the AFP or partner agencies following the seizure or disruption, similar to the actions taken against child abuse websites mentioned in this AFP media release: <https://www.afp.gov.au/news-centre/media-release/afp-blocks-10-child-abuse-websites-and-tracks-thousands-predators-who> (Quote: "Visitors to these sites will now see a 'takedown notice' issued by the AFP and cannot access previously-hosted child exploitation material.")*

This request excludes domains that have been silently taken over (taken over without informing users of the site), as disclosing such information would likely interfere with ongoing AFP operations.

For the purposes of this request, the terms "seized" and "taken down" are used interchangeably to encompass any instance where the AFP or a partner agency rendered a domain inaccessible as part of a law enforcement action.

B. ORIGINAL DECISION

1. On 27 August 2024, an FOI officer authorised to make decisions under the Act made a decision in the

Freedom of Information

/ GPO Box 401 Canberra City ACT 2601

/ Email: foi@afp.gov.au

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following terms:

SEARCHES

Searches for documents were undertaken by the AFP Crime Command, Cyber Command, Intelligence & Covert Services, Counter Terrorism & Special Investigations Command and International Command relevant to the scope of your request which included, a search of all records held by those line areas within the AFP.

As a result, no documents relating to your request have been located in the possession of the Australian Federal Police. By way of further explanation, the Act provides for access to documents in an agency's possession at the time the request is received. There is no requirement for an agency to create a document for the purpose of responding to an FOI request.

I consider all places where documents might be held were searched and the search terms were comprehensive enough to locate any relevant documents.

I understand no documents relating to your request have been located in the possession of the AFP.

Accordingly, I am satisfied all reasonable searches have been conducted and the AFP does not have any documents to produce in response to your request.

Section 24A states:

"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."**

C. INTERNAL REVIEW

1. Your request for internal review relevantly stated:

I am writing to request an internal review of the AFP's handling of my FOI request 'Websites seized by the AFP from 2020 to 2024' (LEX 2983).

I find it hard to believe that the Australian Federal Police does not know which sites they have seized. Your own media release states that the AFP has "blocked 10 child abuse websites". If your agency doesn't know which sites they have blocked, how can you quote that you have blocked 10 of them?

I remind you of your obligations under section 17 to produce a written document of information that is stored electronically and not in a discrete written form. I would imagine the website addresses would be in some sort of database or case files, which can be compiled into a list using Microsoft Word, or, if that is too difficult for your agency, even Windows Notepad.

A full history of my FOI request and all correspondence is available on the Internet at this address:
https://www.righttoknow.org.au/request/websites_seized_by_the_afp_from

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D. DECISION

1. The Act provides for access to existing documents in an agency's possession. Section 17 of the Act relevantly provides:
 - (1) (a) where it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - ...
 - (a) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; ...

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

 - (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.
2. Having regard to the nature and scope of your request, and the nature of the AFP's record holdings, it is not possible to produce a written document containing the information you seek in discrete form by the use of a computer or other equipment that is ordinarily available to the AFP for retrieving or collating stored information.
3. Accordingly, compliance with section 17(1) would substantially and unreasonably divert the resources of the AFP from its other operations.
4. Therefore, under section 17(2), I refuse access to the creation of a document as outlined in your request. Alternatively, under section 24, I also refuse access on the ground that I am satisfied that the document you request access to does not exist.

REVIEW RIGHTS

Under section 54L of the Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

Post: Director of FOI Dispute Resolution
Office of the Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

Yours sincerely,



Lauren Bird
A/Deputy General Counsel
Commercial, Governance and Information Law
Chief Counsel Portfolio

Freedom of Information

/ GPO Box 401 Canberra City ACT 2601

/ Email: foi@afp.gov.au

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