



Our ref: FOI 24-44

27 September 2024

Journo 5027

By email: foi+request-11965-d620492a@righttoknow.org.au

Dear Journo 5027,

Freedom of Information (FOI) Request FOI 24-44: Decision on Access

I refer to your request for access under the *Freedom of Information Act 1982* (FOI Act) to:

- *Any intelligence briefs produced by the ACIC between 2020 and 2024 that focus on Monero.*
- *The content of these briefs, including but not limited to:*
 - *Information on Monero's use in criminal activities.*
 - *Analysis of Monero's privacy features and their potential impact on law enforcement investigations.*
 - *Information on Monero-related dark markets or forums.*
- *The distribution or dissemination of these briefs within the ACIC and to other law enforcement agencies.*

We received your request on 30 August 2024. The 30-day statutory processing period commenced the following day and consequently a decision is due to you by 29 September 2024.

This is a decision made under the FOI Act in relation to documents within the scope of your request.

Authority and Materials Considered

I am authorised under s 23 of the FOI Act to make a decision concerning the information to which you have requested access.

In reaching my decision, I have taken into consideration:

- a) the relevant provisions of the FOI Act;
- b) relevant guidelines issued by the Office of the Australian Information Commissioner; and
- c) relevant Tribunal and Federal Court decisions concerning the operation of the FOI Act.

Decision

If the ACIC possessed documents within the scope of your request, I consider these documents would be exempt documents pursuant to ss 47E(d) and 11A(5) of the FOI Act.

Pursuant to s 26(2) of the FOI Act, the ACIC is not able to confirm or deny whether any documents within the scope of your request exist. To so would cause this document to be an exempt document under the FOI Act.

Extracts of the FOI Act provisions upon which I have relied in this decision are set out at **Annexure A**.

Reasons for Decision

Section 47E(d) of the FOI Act – operations of an agency

Under s 47E(d) of the FOI Act, a document is conditionally exempt if its disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The ACIC relies on effective cooperation with our law enforcement partners in the performance of our functions. That relationship relies on the appropriate and confidential handling of information and intelligence that is shared to facilitate the ACIC's role as Australia's national criminal intelligence agency.

Release of this information would prejudice the ACIC's performance of its statutory intelligence functions (including our methodology, procedure, and intelligence coverage), which would subsequently have a substantial adverse effect on the ACIC's agency operations.

As such, I have decided material relevant to your request is exempt material pursuant to s 47E(d) of the FOI Act as set out at Annexure A.

Public interest considerations

Section 11A(5) of the FOI Act requires that the ACIC must give access to documents that are conditionally exempt unless such access would, on balance, be contrary to the public interest. The public interest test for the conditional exemption referred to above requires the ACIC to weigh the competing public interests and decide where the balance lies.

There are a number of public interest factors favouring access, some of which are set out in s 11B(3) of the FOI Act and [6.19] of the OAIC Guidelines. They are that disclosure would:

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- promote the objects of the FOI Act
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- provide the Australian community with access to information held by the ACIC
- increase the scrutiny, discussion, comment and review of the ACIC's activities
- allow the public to scrutinise the ACIC's operations and make its own judgment as to whether the agency is discharging its functions properly
- enhance the accountability and scrutiny of ACIC decision making

However, the following public interest factors weigh against disclosure and include that disclosure could:

- compromise the effectiveness of the ACIC's law enforcement and intelligence-gathering activities
- prejudice the management and operations of the ACIC
- prejudice law enforcement methodology
- cause distrust in the ability of the ACIC to protect confidential information, therefore prejudicing the flow of information between the ACIC and its partners
- reasonably be expected to prejudice an individual's right to privacy, insofar as the exempt information is personal information

There are a number of factors favouring disclosure. However, the ACIC's remit is the highest priority serious and organised crime. Serious and organised crime is a significant threat to the community and the disclosure of information which hinders the ACIC's ability to disrupt that crime through its law enforcement and intelligence functions weighs considerably against the public interest.

As such, I am of the view that, on balance, the public interest factors weigh against disclosure of the conditionally exempt information within the document.

Your Review Rights

If you are dissatisfied with this decision, you can apply for internal or Information Commissioner (IC) review. You do not have to apply for internal review before seeking IC review.

Internal review

You may seek internal review by applying in writing to the ACIC within 30 days of being notified of this decision. A written application for a review should be sent to the FOI officer at foi@acic.gov.au, or by post to:

FOI Coordinator
Australian Criminal Intelligence Commission
GPO Box 1936
Canberra ACT 2601

Information Commissioner review

Alternatively, you may apply in writing for review by the Information Commissioner. In making your application, you need to provide:

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- a) an address for notices to be sent (this can be an email address); and
- b) a copy of this decision.

It would also help if you set out the reasons for review in your application. Requests for review must be in writing and can be made via the website (www.oaic.gov.au), by email at enquiries@oaic.gov.au, or by post at:

Office of the Australian Information Commissioner
GPO Box 5128
Sydney NSW 2001

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 contact the Information Commissioner by phone on 1300 363 992.

Right to Complain

You may make a complaint to the Information Commissioner about action taken by the ACIC in relation to your application. The complaint needs to be in writing and identify the agency against which the complaint is made.

The Information Commissioner may be contacted on 1300 363 992. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.

Yours sincerely



Lauren P.

Authorised Decision Maker, Position No. 50003458
Australian Criminal Intelligence Commission

Annexure A: Extracts of the FOI Act

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
 - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and
- Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).
- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
 - (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;
 - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii);including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

47E Public interest conditional exemptions—certain operations of agencies

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

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).