



AFP

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Our Ref: LEX 3142

5 November 2024

CR – RIGHT TO KNOW

Email: foi+request-12054-66638606@righttoknow.org.au

Dear CR

Freedom of Information request

I refer to your request dated 15 September 2024 made 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

C.A

AFP24826
FOI Team Leader
Freedom of Information
Chief Counsel Portfolio

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Freedom of Information

/ GPO Box 401 Canberra City ACT 2601

/ Email: foi@afp.gov.au

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
CR**

I, AFP24826, FOI 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 15 September 2024, the AFP received your request in the following terms:
 2. *"1. An unredacted copy of the documents released in LEX 1455, including the decision letter sent to the FOI applicant.
I request that a fresh decision be made regarding the documents identified in the above request.

Please exclude the following information:
i) Personal information of FOI applicants.

I amend the scope of my FOI request to include:

2. Any proceeding decision letters sent to the FOI applicant as a result of an internal or external review."*
3. On 3 October 2024 you agreed to a 14 day extension of time pursuant to section 15AA of the Act.
4. On 5 November 2024, a further extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AC of the Act, to notify you of a decision by 19 November 2024.

B. SEARCHES

1. Searches for documents were undertaken, and included but were not limited to:
 - (a) a search of all records held by AFP case officers with responsibility for matters relating to the documents to which you sought access including, but not limited to LEX 1455 documents;
 - (b) a search of all records held by the relevant line areas within the AFP including CT-Strategy Coordination;

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;
 - (b) the contents of the document/s identified as relevant to the request;
 - (c) advice from AFP officers with responsibility for matters contained in the documents;
 - (d) the Act; and

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(e) the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the Act.

E. DECISION

1. I have identified three documents relevant to your request. Documents have been found in relation to point 1 of your requests. No documents were found in relation to point 2 of your requests.
2. I have decided to release three (3) documents in part with deletions pursuant to sections 22(1)(a)(ii) and 47E(d) of the Act.
3. A schedule of each of document and details of my decision in relation to each document is at Annexure B.
4. My reasons for this decision are set out below.

REASONS FOR DECISION

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

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.

On 27 September 2024, you agreed to exclude the following information from the scope of your request:

- names of AFP members, other than the Senior Executive;
- direct telephone numbers, middle names of AFP members, signatures and mobile telephone numbers of AFP members; and
- the names and other information identifying any third party (including images).

Further, parts of the document also contain information that does not relate to the subject matter of your request.

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 47E(d) applies:

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;..."*

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.

The AFP performs statutory functions relating to services by way of the prevention and investigation of offences. The information identified as exempt under this section of the Act provides details relevant to the AFP's processes in detecting, investigating, preventing and prosecuting criminal

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offending. This material has not been reported in the media nor is in the public domain and therefore should be protected. 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 performance of those functions.

Furthermore, 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 relates to potential threats to public safety being monitored by the AFP. 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 the AFP's functions relating to public safety.

However, I must give access to this information unless, in the circumstances, access at this time would be contrary to the public interest.

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.

While it may be argued the release of this information would promote the objects of the Act, scrutinise the operations of a government agency and promote government accountability and transparency, I consider release would make only a minimal (if any) contribution to those public interest factors.

On the other hand, I consider the prejudice to the agency operations and should be given greater weight. I have considered the following factors against disclosure:

- (c) the need for the agency to maintain the confidentiality with regard to the subject matter of information relating to the AFP's procedures during an investigation;
- (d) the potential for the release of the information to jeopardise current operational measures directed to securing public safety;
- (e) the need for law enforcement agencies to maintain the confidentiality over information that may be relevant to the prevention and investigation of offences;
- (f) the overall public interest in law enforcement agencies maintaining public safety; and
- (g) the need for the agency to maintain the efficiency of current procedures.

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 maintain the confidentiality of current operational information and ensure public safety. Accordingly, I find that the documents or parts of the documents are exempt under section 47E(d) of the Act.

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*****YOU SHOULD READ THIS GENERAL ADVICE IN CONJUNCTION WITH THE LEGISLATIVE REQUIREMENTS IN THE FREEDOM OF INFORMATION ACT 1982*****

REVIEW AND COMPLAINT RIGHTS

If you are dissatisfied with a Freedom of Information decision made by the AFP, you can apply either for internal review of the decision, or for a review by the Information Commissioner (IC). You do not have to apply for internal review before seeking review by the IC.

For complaints about the AFP's actions in processing your request, you do not need to seek review by either the AFP or the IC in making your complaint.

REVIEW RIGHTS under Part VI of the Act

Internal review by the AFP

Section 54 of the FOI Act gives you the right to apply for internal review of this decision. No particular form is required to make an application for internal review, however, an application needs to be made in writing within 30 days of this decision. It would assist the independent AFP decision-maker responsible for reviewing the file if you set out in the application, the grounds on which you consider the decision should be reviewed.

Section 54B of the FOI Act provides that the internal review submission must be made within 30 days. Applications may be sent by email (foi@afp.gov.au) or addressed to:

Freedom of Information
Australian Federal Police
GPO Box 401
Canberra ACT 2601

REVIEW RIGHTS under Part VII of the Act

Review by the Information Commissioner

Alternatively, section 54L of the FOI Act gives you the right to apply directly to the IC for review of this decision. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision.

Section 54S of the FOI Act provides the timeframes for an IC review submission. For an *access refusal decision* covered by section 54L(2), the application must be made within 60 days. For an *access grant decision* covered by section 54M(2), the application must be made within 30 days.

Applications for IC review may be lodged by email (foidr@oaic.gov.au), using the OAIC's online application form (available at www.oaic.gov.au) or addressed to:

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

The IC encourages parties to an IC review to resolve their dispute informally, and to consider possible compromises or alternative solutions to the dispute in this matter. The AFP would be pleased to assist you in this regard.

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Complaint

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 investigated 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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