



AFP

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Our Ref: LEX 3238

9 December 2024

Tyler – (Right to Know)

Email: foi+request-12187-685584e3@righttoknow.org.au

Dear Tyler

Freedom of Information request

I refer to your request dated 19 October 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.

Yours sincerely,

Lauren Bird
A/Deputy General Counsel
Commercial, Governance and 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
TYLER (RIGHT TO KNOW)**

I, Lauren Bird, A/Deputy General Counsel, 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 19 October 2024, the AFP received your request in the following terms:

"Is it possible to provide the following:

Memorandum of Understanding between the Australian Federal Police and the National Police of the Netherlands on Combating Transnational Crime and Developing Police Cooperation (came into effect on 2 June 2014?."

2. On 31 October 2024, you agreed to a 30 day extension of time pursuant to section 15AA of the Act.

B. SEARCHES

1. Searches for documents were undertaken by AFP International Command as the business area with responsibility for the document to which you seek access.

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

D. DECISION

1. I have identified 1 document relevant to your request, being the requested Memorandum of Understanding.
2. I have decided to refuse access to this document, pursuant to sections 33(a)(iii) and 33(b) of the Act.
3. My reasons for this decision are set out below.

REASONS FOR DECISION

Material to which section 33(a)(iii) applies:

4. Section 33(a)(iii) of the Act provides that:

"A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

...

(iii) the international relations of the Commonwealth..."

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5. The identified document directly relates to the AFP's relationship and interactions with a foreign law enforcement body, in connection to a particular crime type and disruption activities. I am satisfied that to grant access to the documents would, or could reasonably be, expected to cause damage to the international relations of the Commonwealth. This information sets out processes and procedures to facilitate this co-operation, which are widely acknowledged as confidential.
6. The FOI Guidelines at paragraph [5.36] describes international relations as the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. As this document details how the AFP and a foreign law enforcement body will interact in relation to fighting a particular crime type, release of this information could reasonably be expected to prejudice the effectiveness of such procedures.
7. Further, as such information is regarded as confidential in nature, being prepared for a particular purpose and not to be shared more broadly, release of this information could reasonably be expected to cause a loss of trust and confidence in the AFP and therefore, the Australian government. Should this occur, not only will the ability of the AFP and this law enforcement agency to effectively co-operate be negatively impacted upon, but the Australian Government may also experience a decline in trust and information received from foreign governments. I consider this would prejudice the ability of the Australian Government to maintain good working relations with other governments, and therefore affect international relations.
8. In evaluating the potential harmful effects of disclosing information relating to the Australian government's dealings with other government organisations, I have taken into account the 'mosaic theory', which refers to individual pieces of information which may not be harmful in isolation, but which may cause damage to Australia's international relations when combined with other pieces of information.
9. In light of the above, I am satisfied that to grant access to the document would, or could reasonably be, expected to cause damage to the international relations of the Commonwealth.
10. Accordingly, I find the document exempt under section 33(a)(iii) of the Act.

Material to which section 33(b) applies:

11. Section 33(b) of the Act provides that:

"A document is an exempt document if disclosure of the document under this Act:

...

- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth."*

12. The documents or parts of documents identified as exempt under this section of the Act contain information provided by a foreign government on an understanding of confidentiality, and on the condition that they are not to be released outside of the AFP.
13. The information was provided on a confidential basis for investigative purposes only and disclosure would be a breach of that confidence. I am satisfied that to grant access to the documents would divulge information communicated in confidence to the AFP by a foreign government and would be likely to harm the future supply of information to the AFP.

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14. Accordingly, I find the documents or parts of the documents are exempt under section 33(b) of the Act.

*****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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