



# AFP

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Our Ref: LEX 3253

16 January 2025

Sean (Right to Know)

Email: [foi+request-12213-78801d3b@righttoknow.org.au](mailto:foi+request-12213-78801d3b@righttoknow.org.au)

Dear Sean

### **Freedom of Information request**

I refer to your request dated 23 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. 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.

My sincere apologies for the delay in notifying you of a decision in relation to this request.

Yours sincerely

Bella  
A/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](mailto:foi@afp.gov.au)

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY  
SEAN (RIGHT TO KNOW)**

I, Bella, A/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 23 October 2024, the AFP received your request in the following terms:

*"Request:*

- 1. Initial communication from international law enforcement agencies to the AFP relating to a joint operation named "Shrouded Horizon" that the AFP took part in during 2015 to seized the domain or website associated with black market site "Dark0de".*
- 2. Any documentation pertaining to the design of the websites "Seizure image" or the AFP logo placement on the image.*
- 3. Internal communications or memorandums pertaining to the immediate aftermath of the websites seizure, limited to a 7 day search period from initial take down."*

2. On 15 November 2024, you agreed to a 30 day extension of time pursuant to section 15AA of the Act.
3. On 3 January 2025, a 14 day extension of time was granted by the Office of the Information Commissioner pursuant to section 15AB of the Act.
4. On 14 January 2025, 14 day extension of time was granted by the Office of the Information Commissioner pursuant to section 15AC of the Act.

**B. SEARCHES**

1. Searches for documents were undertaken by the relevant AFP members holding documents relating to your request.

**C. WAIVER OF CHARGES**

1. The AFP has decided to waive any applicable fees.

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

**E. DECISION**

1. I have identified twenty-two (22) documents relevant to your request.

2. I have decided to:
  - (a) release two (2) documents to you in full;
  - (b) release eleven (11) documents in part with deletions pursuant to sections 22(1)(a)(ii), 33(a)(iii), 33(b), 47E(c), 47E(d) and 47F of the Act; and
  - (c) refuse access to nine (9) documents, pursuant to sections 22(1)(a)(ii), 33(a)(iii), 33(b), 47E(d) and 47F 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.

**F. REASONS FOR DECISION**

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

1. 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.
2. On 23 October 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).
3. 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 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...”*

5. The documents or parts of documents identified as exempt under this section of the Act relate to information provided by an agency of a foreign government. The information was provided to the AFP by a foreign government for investigative purposes on the understanding that it would only be used for that purpose and not be disseminated further. 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 was communicated in the expectation that it would remain confidential. Therefore, to disclose this material would damage the Commonwealth's relations with a foreign country. If these documents were to be released, it would be likely to inhibit the exchange of information to the AFP in the future.
6. These documents contain information that may impact international relations between the AFP and foreign agencies if released. The material exempt from release under this section is not available in public reporting. Therefore, disclosure would likely harm relations with these international law enforcement agencies in that they may be less willing to share information and cooperate with the AFP in future joint operations. Cooperation and correspondence between the

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AFP and international partners must be protected to ensure the integrity and effectiveness of joint operations.

7. Accordingly, I find the documents or parts of the documents are exempt under section 33(a)(iii) of the Act.

**Material to which section 33(b) applies:**

8. 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."*

9. 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. 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.
10. The efficacy of international cooperation in law enforcement relies on the preservation of protected information detailing highly sensitive investigative material. These law enforcement partnerships depend on maintaining the confidentiality of such material and processes that support international operations. This confidentiality extends beyond the finalisation of the investigation as its release would continue to divulge confidential communications to the AFP by foreign partners.
11. Accordingly, I find the documents or parts of the documents are exempt under section 33(b) of the Act.

**Material to which section 47E(c) applies:**

12. Section 47E(c) 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:*

...

- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency."*

13. The FOI Guidelines at paragraph [6.103] state the following in respect of section 47E(c):

*"For this conditional exemption to apply, the document must relate to either:*

- *the management of personnel – including broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and work health and safety*
- *the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or*

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*eligibility for progression.” (footnotes omitted).*

14. Parts of the document have been identified as being exempt under section 47E(c). This material contains the role descriptions of AFP appointees below SES level where their position could reasonably identify their person.
15. The information I have identified as conditionally exempt could publicly identify staff not only as working for the AFP, but their work location and activities. The public disclosure of this information could expose those appointees to unwelcome behaviour from hostile actors. Law enforcement employees have been a target of planned and actual attacks in Australia. AFP appointees have also been the target of attempts to obtain information.
16. Publicly identifying a person as an AFP appointee could also compromise the ability of some to work in operational areas which require them to have no public profile.
17. These risks are not far-fetched, and need to be considered in the context that information released under FOI can be easily published online, and may widely available. On the basis that they present risks to the health and safety, wellbeing, morale and career development of AFP appointees, I am satisfied that release this information could have a substantial adverse effect on the management of personnel within the AFP.
18. However, I must give access to this information unless, in the circumstances, access at this time would be contrary to the public interest.
19. 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.
20. I have considered the following factors against disclosure:
  - (c) prejudice to the safety, welfare and morale of AFP personnel;
  - (d) release may have a substantial adverse effect on the management of personnel in future.
21. Ultimately, while there is a public interest in providing access to documents held by the AFP, consequently, I have given greater weight to factors (c) and (d) above, and conclude that on balance, disclosure is not in the public interest. I consider the need to ensure the safety of AFP personnel, and the AFP’s ability to support and manage its personnel weighs against disclosure.
22. Accordingly, I find those parts of the document identifying staff names are exempt under section 47E(c) of the Act.

**Material to which section 47E(d) applies:**

23. 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;...”*

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24. 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.
25. 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 offending. 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.
26. Information in the documents exempt under this section relates to the organisation and planning of investigative operations among AFP personnel, data gathered to assist in the takedown of the website, and discussion of operational material and evaluation of next steps and outcomes in the investigation. Release of this material would have a substantial adverse effect on the AFP’s ability to properly and efficiently conduct operations and investigate criminal offending.
27. Additionally, parts of the documents redacted under this section of the Act reveals internal AFP email addresses and contact details. These contact details are not widely known and to disclose this information would impact on the AFP’s day to day operations by resulting in the diversion of AFP resources to responding to unsolicited correspondence received through those points of contact.
28. However, I must give access to this information unless, in the circumstances, access at this time would be contrary to the public interest.
29. 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.
30. 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; and
  - (d) the need for the agency to maintain the efficiency of current procedures.
31. 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.
32. On the other hand, I consider the prejudice to the agency operations and should be given greater weight.
33. While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (c) and (d) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure continued cooperation during police investigations and the effectiveness and integrity of current procedures. I find that release of the documents or parts of the documents would be an unreasonable disclosure under section 47E(d) of the Act.

***Material to which section 47F applies:***

34. Section 47F of the Act provides that:

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*“(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).”*

35. The documents or parts of documents identified as exempt under this section of the Act contain personal information of individuals. Personal information is information or an opinion about an individual whose identity is known or easily ascertainable. I find that these documents or parts of the documents contain details including the name and contact details of third parties.
36. In considering whether release of this information is unreasonable, I have taken into account factors at section 47F(2), including:
- (a) the extent to which the information is well known;
  - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the documents;
  - (c) the availability of the information from publicly accessible sources;
  - (d) the current relevance of the information; and
  - (e) the circumstances in which the information was obtained and any expectation of confidentiality.
37. I find release of this personal information to be unreasonable. The information is not well known nor available from publicly available sources. The information was obtained by the AFP for the purpose, and in the context of, responding to an investigation with the expectation that the information remain confidential. Furthermore, I have considered it unreasonable in the circumstances to seek consent from individuals on the release of their personal information.
38. However, I must give access to the folios unless, in the circumstances, access at this time would on balance be contrary to the public interest.
39. I have considered the general public interest in access to documents as expressed in sections 3 and 11B of the Act as the factor favouring disclosure.
40. I have considered the following factors against disclosure:
- (a) prejudice to the protection of an individual’s right to privacy (including in consideration of whether their consent was provided);
  - (b) the risk that if people are aware their personal information could be disclosed, that this would impede the flow of information to the police;
  - (c) the need for the agency to maintain the confidentiality with regard to the subject matter and the circumstances in which the information was obtained;
  - (d) if such information was disclosed, it may discourage public cooperation in AFP investigations;
  - (e) the fact that the information is not on the public record or available from publicly accessible sources;
  - (f) the need for the agency to maintain the confidentiality with regard to the subject matter and the effect that disclosure of the information may have on third parties.
41. While there is a public interest in providing access to documents held by the AFP, I have given greater weight to the factors against disclosure above and conclude that on balance, disclosure is not in the public interest.
42. Accordingly, I find the documents or parts of documents are exempt under section 47F 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](mailto: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](mailto:foidr@oaic.gov.au)), using the OAIC's online application form (available at [www.oaic.gov.au](http://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.

#### ***Complaint***

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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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SCHEDULE OF DECISION – LEX 3253  
RELEASE OF DOCUMENTS – SEAN (RIGHT TO KNOW)

Document No	Folio No	Author	Description	Decision	Exemption
1	1-7	Australian Federal Police (AFP)	Email correspondence	Release in Part	Sections 22(1)(a)(ii) 47E(d) and 47F
2	8-11	AFP	Case Note 151442707	Release in Part	Sections 22(1)(a)(ii), 33(a)(iii), 33(b), 47E(c) and 47E(d)
3	12-13	AFP	Case Note 151464344	Release in Part	Sections 22(1)(a)(ii), 33(a)(iii), 33(b) and 47E(d)
4	14-15	AFP	Case Note 151469939	Release in Part	Sections 22(1)(a)(ii), 33(a)(iii), 33(b) and 47E(d)
5	16-17	AFP	Case Note 151378620	Release in Part	Sections 22(1)(a)(ii), 33(a)(iii) and 47F
6	18	AFP	Case Note 151352608	Refuse Access	Sections 22(1)(a)(ii), 33(a)(iii), 47E(d) and 47F
7	19-21	AFP	Case Note 151364291	Release in Part	Sections 22(1)(a)(ii), 47E(d) and 47F
8	22-24	AFP	Case Note 151366866	Release in Part	Sections 22(1)(a)(ii) and 33(a)(iii)
9	25-27	AFP	Case Note 151378608	Release in Part	Sections 22(1)(a)(ii) and 33(a)(iii)
10	28-29	AFP	Email correspondence	Refuse Access	Sections 22(1)(a)(ii), 33(a)(iii), 33(b), 47E(d) and 47F
11	30-39	AFP	Email correspondence	Release in Part	Sections 22(1)(a)(ii), 33(a)(iii), 33(b), 47E(c), 47E(d) and 47F
12	40-41	AFP	Email correspondence	Refuse Access	Sections 22(1)(a)(ii), 33(a)(iii), 47E(d) and 47F
13	42-43	AFP	Letter from AFP to foreign law enforcement agency	Refuse Access	Sections 22(1)(a)(ii), 33(a)(iii), 33(b) and 47F
14	44-46	AFP	Email correspondence	Release in Part	Sections 22(1)(a)(ii), 33(a)(iii), 33(b), 47E(c), 47E(d) and 47F
15	47-48	AFP	Email correspondence	Release in Part	Sections 22(1)(a)(ii) and 33(a)(iii)

**ANNEXURE B**

16	49	AFP	Dark0de seizure banner visual	Release in Full	Nil
17	50	AFP	'Add funds' visual found on Dark0de website	Release in Full	Nil
18	51	AFP	Visual of data used for investigation	Refuse Access	Section 47E(d)
19	52	AFP	Visual of data used for investigation	Refuse Access	Section 47E(d)
20	53	AFP	Visual of data used for investigation	Refuse Access	Sections 47E(d) and 47F
21	54	AFP	Visual of data used for investigation	Refuse Access	Section 47E(d)
22	55	AFP	Visual of data used for investigation	Refuse Access	Section 47E(d)