

Our ref: CRM2015/426

26 June 2015

Henare Degan

Email: [foi+request-1047-f9873b06@ighttoknow.org.au](mailto:foi+request-1047-f9873b06@ighttoknow.org.au)

Dear Mr Degan,

**Freedom of Information request**

I refer to your application dated 22 April 2015, under the *Freedom of Information Act 1982* (the Act) seeking the following:

*"The document is listed as following in July to December 2014 Harradine report: File number: 2014/00006992, Title: Students of Sustainability Protest march for Aboriginal Sovereignty."*

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.

**Information Publication Scheme (IPS)**

As notified to you on 6 May 2015 and in accordance with section 11C of the Act, it has been decided to publish the documents (in part) in respect of your request. Publication of the documents and any relevant documents will be made on the AFP website at <http://www.afp.gov.au/about-the-afp/information-publication-scheme/routinely-requested-information.aspx> between 5 and 10 days after notification of this decision.

Yours sincerely,



Nathan Scudder  
Coordinator  
Freedom of Information  
Operations Support  
Australian Federal Police

## **STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY HENARE DEGAN**

I, Nathan Scudder, Coordinator, Freedom of Information, am an officer authorised under section 23 of the Act to make decisions in relation to the Australian Federal Police.

What follows is my decision and reasons for the decision in relation to your application.

### **BACKGROUND**

On 22 April 2015, this office received your application in which you requested:

*"The document is listed as following in July to December 2014 Harradine report: File number: 2014/00006992, Title: Students of Sustainability Protest march for Aboriginal Sovereignty."*

On 20 May 2015, you were notified of the requirement to consult a third party pursuant to subsection 15(6) of the Act.

### **SEARCHES**

In relation to this request, the following searches for documents have been undertaken:

- a) a "manage records" search of the AFP's investigation case management system PROMIS for records relating to "Students of Sustainability";
- b) a search of all records held by AFP case officers with responsibility for matters relating to the documents to which you sought access.
- c) a search of all records held by the relevant line areas within the AFP;

### **DECISION**

I have identified thirteen documents relevant to your request. A schedule of each document and details of my decision in relation to each document is at Annexure B.

I have decided that one of the documents itemised at Annexure B will be released to you in its entirety. Some of the documents that relate to your request are released with deletions pursuant to subsections 22(1)(a)(iii), 47E(d) and 47F of the Act. Some of the documents that relate to your request are exempt in full, pursuant to subsection 47E(d) of the Act.

Further, given that the request has totalled only fifty eight pages and was not a complex request to process, I am waiving any further fees and charges which are normally associated with the processing of applications under the Act.

## REASONS FOR DECISION

### ***Folios to which subsection 22(1)(a)(ii) apply:***

Subsection 22(1)(a)(ii) of the Act provides that:

- "(1) Where:
- (a) an agency or Minister decides:
  - (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request;"

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information which is considered irrelevant to the request. I have determined that information contained in some of the folios should be deemed to be exempt because it does not come within the scope of your application and thus falls outside the ambit of your request. By way of further explanation, these exempt folios cover information which refers to other issues which are not mentioned in your FOI application.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 22(1)(a)(ii) of the Act.

### ***Folios to which subsection 47E(d) apply:***

Subsection 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 in the schedule 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 its operational functions in ensuring public safety, as it reveals how information is obtained and actioned for the purposes of protecting the public.

I have considered the public interest factors both in favour and against disclosure of the information in these folios.

In relation to the factors favouring disclosure, I believe the following are relevant:

- (a) the general public interest in access to documents as expressed in sections 3 and 11 of the FOI 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.

In relation to the factors against disclosure, I believe that the following are relevant:



- (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 and collated;
- (d) that if information concerning the operation was revealed, it may have a substantial adverse effect on the conduct of similar operations in the future; and
- (e) if such information was disclosed, it may prejudice security, law enforcement and public safety.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (c), (d) and (e) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure public safety during police operations and the effectiveness of current procedures. I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 47E(d) of the Act.

***Folios to which section 47F apply:***

Section 47F of the Act provides that:

*"(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)."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain personal information of third parties. Personal information is information or an opinion about an individual whose identity is known or easily ascertainable. I find that these documents contain personal information.

I have considered the public interest factors both in favour and against disclosure of the information in these folios.

In relation to the factors favouring disclosure, I believe the following are relevant:

- (a) the general public interest in access to documents as expressed in sections 3 and 11 of the FOI Act;
- (b) the extent to which the information is well known;
- (c) 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;
- (d) the availability of the information from publicly accessible sources;
- (e) the current relevance of the information; and
- (f) the circumstances in which the information was obtained and any expectation of confidentiality.

In relation to the factors against disclosure, I believe that the following are relevant:

- (g) prejudice the protection of an individual's right to privacy;
- (h) impede the flow of information to the police;

- (i) the need for the agency to maintain the confidentiality with regard to the subject matter and the circumstances in which the information was obtained; and
- (j) if such information was disclosed, it may discourage public cooperation in AFP investigations.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (g) to (j) above and conclude that on balance, disclosure is not in the public interest. The AFP has not received consent regarding the release of some personal information regarding this request, disclosure of that information would be contrary to an individuals' right to the protection of their personal privacy. I find that the release of these documents or parts of documents would be an unreasonable disclosure of personal information and are therefore exempt under section 47F of the Act.

### **EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED**

In reaching my decision, I have relied on the following documentary evidence:

- ❖ the scope of your application;
- ❖ the contents of the documents listed in the attached schedule;
- ❖ advice from AFP officers with responsibility for matters relating to the documents to which you sought access;
- ❖ consultation with relevant State Agencies;
- ❖ consultation with third parties;
- ❖ *Freedom of Information Act 1982*;
- ❖ Guidelines issued by the Department of Prime Minister and Cabinet; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

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

### **REVIEW AND COMPLAINT RIGHTS**

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

You do not need to seek a review by either the AFP or the IC should you wish to complain about the AFP's actions in processing your request.

#### ***REVIEW RIGHTS under Part VI of the Act***

##### ***Internal Review by the AFP***

Section 53A of the Act gives you the right to apply for an internal review in writing to the Australian Federal Police (AFP) within 30 days of being notified of a decision. No particular form is required. It would assist the independent AFP decision-maker responsible for the internal review if you set out in the application, the grounds on which you consider that the decision should be reviewed.

Section 54B of the Act provides that the internal review submission must be made within 30 days. Applications for a review of the decision should be addressed to:

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

### ***REVIEW RIGHTS under Part VII of the Act***

#### ***Review by the Information Commissioner (IC)***

Alternatively, Section 54L of the Act gives you the right to apply directly to the IC or following an internal review by the AFP. 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. It would also help if you set out the reasons for review in your application.

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

Applications for a review of the decision should be addressed to:

Office of the Australian Information Commissioner  
GPO Box 2999  
Canberra ACT 2601

On 13 May 2014, as part of the 2014-15 Federal Budget, the Government announced that the OAIC would be abolished effective from 31 December 2014. The Freedom of Information Amendment (New Arrangements) Bill 2014, which proposes the closure of the Office of the Australian Information Commissioner (OAIC) on 31 December 2014, was not considered by the Senate before the end of the 2014. The OAIC will therefore remain operational until further notice. In the meantime, Information Commissioner reviews will continue to be handled by the OAIC.

For details on how this will affect the processing of IC review applications, visit [www.oaic.gov.au/info-on-oaic-shut-down-and-foi-reviews-and-complaints](http://www.oaic.gov.au/info-on-oaic-shut-down-and-foi-reviews-and-complaints).

The OAIC encourages parties to an IC review to resolve their dispute informally, and encourages agencies to consider possible compromises or



alternative solutions to the dispute in this matter. The AFP would be pleased to assist you in this regard.

Further information about the process for IC review can be found in Part 10 of the Guidelines which are available on our website at <http://www.oaic.gov.au/publications/guidelines.html>.

***RIGHT TO COMPLAIN under Part VIIB of the Act***

Section 70 of the Act provides that a person may complain to the IC about action taken by the Australian Federal Police in relation to your application.

A complaint to the IC may be made in writing and identify the agency against which the complaint is made.

The IC 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.

SCHEDULE OF DECISION – CRM 2015/426  
RELEASE OF DOCUMENTS – HENARE DEGAN (Right to Know)

Document No	Folio No	Date	Author	Description	Exemption	Reason
1	1-2	26.6.14	Australian Federal Police (AFP)	Case Summary 5636361	Released with deletions: 47E(d), 47F Folios: 1 Release in full: Folio: 2	<b>s47E(d)</b> Exempted material would disclose information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the AFP and would be contrary to the public interest. Access must be given unless it would be contrary to the public interest. <b>s47F</b> Deletions are made on the grounds that disclosure would involve the unreasonable provision of personal details of people other than the FOI applicant. Access must be given unless it would be contrary to the public interest.
2	3-4	2.7.14	AFP	Case Note 151133059	Released with deletions: 47F Folios: 3-4	<b>s47F</b>
3	5-6	23.6.14	AFP	Email correspondence	Released with deletions: 47F	<b>s47F</b>



					Folios: 5 -6	
4	7-10	19.6.14	AFP	Email correspondence	Released with deletions: 47F Folios: 7-10	<b>s47F</b>
5	11-13	20.6.14	AFP	Email correspondence	Released with deletions: 47F Folios: 11-13	<b>s47F</b>
6	14-16	20.6.14	AFP	Email correspondence	Released with deletions: 47F Folios: 14-16	<b>s47F</b>
7	17-19	23.6.14	AFP	Email correspondence	Released with deletions: 47F Folios: 17-19	<b>s47F</b>
8	20	24.6.14	AFP	Email correspondence	Released with deletions: 47E(d), 47F Folios: 20	<b>s47E(d)</b> <b>s47F</b>
9	21	24.6.14	AFP	Email correspondence	Released with deletions: 47F Folios: 21	<b>s47F</b>
10	22-23	27.6.14	AFP	Email correspondence	Released with deletions: 47E(d) Folios: 22-23	<b>s47E(d)</b>
11	24	30.6.14	AFP	Email correspondence	Released with deletions: 47E(d)	<b>s47E(d)</b>

					Folios: 24	
12	25-32	-	AFP	Note book entries	Released with deletions: 47E(d), 47F, 22(1)(a)(iii) Folios: 25-32	<b>s47E(d)</b> <b>s47F</b> <b>s22(1)(a)(ii)</b> Exempted material would disclose information that would reasonably be regarded as irrelevant to the request.
13	33-58	-	AFP	2014 ACT Policing Operation Order	Exempt in full: 47E(d) Folios: 33 - 58	<b>s47E(d)</b>

Authorised Decision Maker:

Nathan Scudder  
Freedom of Information  
Operations Support  
Australian Federal Police



Date of Decision:

26 June 2015