



AFP

Our Ref: LEX 2405

24 May 2024

CR  
Right to Know

By email only: [foi+request-11057-2ff1fa28@righttoknow.org.au](mailto:foi+request-11057-2ff1fa28@righttoknow.org.au)

Dear CR

### Freedom of Information request

I refer to your following request for access to documents dated 29 January 2024, pursuant to the *Freedom of Information Act 1982* (FOI Act):

*1. I request the creation of a document under section 17 listing documents containing the words "Clearview AI" or any variants/abbreviations of that term (such as "Clearview", or "Clearview facial recognition", etc.), for the period 1 January 2017 to 29 January 2024.*

*o The list should specify, where applicable:*

*+ The title of each document.*

*+ The date of creation for each document.*

### Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Commissioner of Police under section 23 of the Act.

### Background

On 2 February 2024, you were advised the scope of your request in its current form would be a substantial and unreasonable diversion of agency resources as the AFP would be required to conduct agency wide search of documents.

On 8 February 2024, you revised the scope of your request to the following:

*I request the creation of a document under section 17 listing:*

- 1. All correspondence between the AFP and Clearview AI, Inc.*
- 2. All internal correspondence containing the words "Clearview AI" or any variants/abbreviations of that term (such as "Clearview", or "Clearview facial recognition", etc).*
- 3. FOI requests received relating to Clearview AI.*

*The list should specify, where applicable:*

*+ The title of each document.*

*+ The date of creation for each document.*

#### Freedom of Information

/ GPO Box 401 Canberra City ACT 2601

/ Email: [foi@afp.gov.au](mailto:foi@afp.gov.au)

### **Revisions to the scope of your request**

On 3 March 2024, you received a Notice of Intention to Refuse (Notice) under section 24AB(2) of the FOI Act. The Notice set out:

- the AFP's intention to refuse the request on practical grounds;
- the nature of the practical refusal reason that existed pursuant to section 24AA(1)(a)(i) of the FOI Act;
- the consultation period and required actions;
- the name and contact details of the officer you could consult with during the consultation period; and
- proposed ways in which you could revise your request to remove the practical refusal reason.

You responded to the Notice on the same day, with the following:

*While I acknowledge this procedural defect, I am willing to proceed with the consultation process on the condition that the department seek an extension of time under section 15AC to allow for internal review rights to be reinstated.*

*In the interest of reducing the volume of work required to process part two of my request, I propose limiting its scope to only include correspondence with heads of departments. Please confirm if this amended scope would assist in reducing the workload.*

*Additionally, I would like to address a point that has been raised during your consultation notice. It has been stated that it would take a FOI officer approximately two minutes to copy and paste the title of each document into a spreadsheet. I find this claim somewhat difficult to accept, particularly given the fact that multiple results with identical email headers could be consolidated into the list just once.*

On 3 April 2024, I responded to you as follows:

*You have suggested revising the scope of your request to 'correspondence with heads of departments'. Can you please provide clarification your definition of department heads? Are you meaning correspondence to the Commissioner, or Deputy Commissioner's as well? Once I have received this clarification, I will have to conduct searches again to determine the volume of documents captured.*

*As advised in the Notice of Intention to Refuse, the AFP do not have a system to convert the audit results into an appropriate section 17 document. We therefore, would be required to manually create this document by entering the information into a spreadsheet to meet your specific parameters. It is not as simple as cutting and pasting information into a spreadsheet.*

*To reinstate your review rights, you may wish to consider withdrawing your FOI request and resubmit your request once the above clarification has been provided.*

On 16 April 2024, a further Notice of Intention to Refuse was sent to you seeking clarification on your revised scope, as a response was not received from our correspondence of 3 April 2024. You did not respond to my 2 and 16 April 2024 communications.

### **DECISION**

I apologise for the delay in finalising your request.

I have decided to refuse access to the document that you have requested access to on the following basis:

1. The document you are seeking access to, does not exist.
2. Section 17 of the Act relevantly provides:
  - a. where it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
  - b. the agency could produce a written document containing the information in discrete form by:
    - i. the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; ...; the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
3. Having regard to the nature and scope of your request, and the nature of the AFP's record holdings, it is not possible to produce a written document containing the information you seek in discrete form by the use of a computer or other equipment that is ordinarily available to the AFP for retrieving or collating stored information.

## **REVIEW RIGHTS**

### **Application for internal review of decision**

Section 54 of the Act gives you the right to apply for an internal review of my decision. An application for an internal review of my decision must be made in writing within 30 days of receipt of this letter. No particular form is required, but it is advisable to set out in the application the grounds on which you consider that the decision should be reviewed. An application for review should be addressed as follows:

Email: [foi@afp.gov.au](mailto:foi@afp.gov.au)

Post: Freedom of Information Team  
Australian Federal Police  
GPO Box 401  
CANBERRA ACT 2601

### **Review by the Australian Information Commissioner**

*Alternatively*, under section 54L of the Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

Post: Director of FOI Dispute Resolution  
Office of the Australian Information Commissioner  
GPO Box 5288  
SYDNEY NSW 2001

**COMPLAINT RIGHTS**

You may also make a complaint to the Australian Information Commissioner about the AFP's actions in relation to your request. Making a complaint about the way the AFP handled an FOI request is a separate process to seeking review of this decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foicomplaint>

Yours sincerely

C.A

Casey  
A/FOI Team Leader - Corporate  
Freedom of Information  
Chief Counsel Portfolio

**\*\*\*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 for review by the Information Commissioner (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 VII of the FOI Act***

#### ***Review by the Information Commissioner***

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***

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/>.