



AFP

3 April 2420

Matthew M
Right to Know
Email: foi+request-11081-7471265c@righttoknow.org.au

Dear Mr M

Freedom of Information request

I refer to your request dated 5 February 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

CA

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

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

I, Casey Auld, A/FOI Team Leader, Freedom of Information, am an officer authorised under section 23 of the 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.

BACKGROUND

On 5 February 2024 the AFP received your request in the following terms:

On Monday, 5 February 2024, DC Ian McCartney was questioned by Senator Shoebridge in the Parliamentary Joint Committee on Law Enforcement in relation to Operation Bourglinster, an AFP counterterrorism investigation into an autistic juvenile with an alleged fixation on Islamic State.

In response, DC McCartney said "there were a range of reviews happening in terms of this matter."

I wish to request, pursuant to the Freedom of Information Act 1982, a copy of any:

- 1. Document that concisely summarises the reviews that DC McCartney said were underway, or which have already been completed in relation to this matter;*
- 2. Minute, brief, or similar document requesting or setting the scope or terms of reference for any such review;*
- 3. Draft, interim or final report that has resulted from any such review;*
- 4. Governance instrument[1] that has been updated a result of any such review.*

SEARCHES

Searches for documents were undertaken by the Office of DC National Security, as the operational area with responsibility for the documents to which you seek access.

EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

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

- the scope of your request;
- the contents of the documents identified as relevant to the request;
- advice from AFP officers with responsibility for matters contained in the documents;
- the Act; and
- the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the Act.

DECISION

Documents have been located in relation to points 2 and 3 of your request. No documents were located in relation to points 1 and 4 of your request as the review has not been finalised and such documents are not in existence.

I have decided to refuse access to all documents identified as relevant to points 2 and 3 pursuant to section 47C of the Act.

My reasons for this decision are set out below.

REASONS FOR DECISION

Material to which section 47C applies:

Section 47C of the Act provides that:

- "(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth."*

The documents identified as exempt under this section of the Act contain information, the release of which, is exempt on the grounds that it is currently an internal working document of the AFP. The release of this material would disclose matter in the nature of opinion, proposed recommendations or interim decisions recorded in the course of consultation and deliberation that has taken place for the purposes of an internal review of Operation Bourglinster.

Further, the review of Operation Bourglinster is still ongoing and material is still being obtained, which will need to be considered before a formal written report is finalised and provided to the AFP Commissioner and Attorney General for their consideration. During this process, documents record advice, recommendations and opinion in material prepared by the AFP during which time members and stakeholders are required to communicate directly, freely and confidentially on issues which are considered to be sensitive. Release would inhibit the ability of the AFP to conduct a thorough, considered review by prematurely exposing opinions being considered as part of the AFP's deliberations into the review of Operation Bourglinster.

Section 47C(2) provides that:

- "...
(2) Deliberative matters does not include either of the following:
(a) operational information (see section 8A);
(b) purely factual material.*

As the documents contain deliberative material and was prepared for a deliberative purpose, I am satisfied that this information is not purely factual material and therefore is not excluded under section 47C(2) of the Act.

I have considered the public interest factors both in favour and against disclosure of the information in these folios to determine whether disclosure would be contrary to the public interest.

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

- (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.

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

- (c) if such information was disclosed, it would restrict the ability of AFP employees in future to record their deliberations and opinions directly, freely and confidentially during internal review processes;
- (d) disclosure would prejudice the agency's ability to form analyses and present its recommendations in relation to Operation Bourglinster; and
- (e) that if information concerning the documents was revealed, it may compromise the AFP's operations and damage relations with external stakeholders.

I have considered the public interest factors both in favour and against disclosure and in my view, in relation to these documents, the factors at (c) to (e) against disclosure outweigh the factors in favour of disclosure. Accordingly, I find the documents or parts of the documents are exempt under section 47C 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.

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 investigation 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/>.