



AFP

Our Ref: LEX 2543

11 April 2024

XD000ME

Email: foi+request-11234-ad600419@righttoknow.org.au

Dear XD000ME,

I refer to your request dated 15 March 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 not to publish the documents in respect of your request.

Yours sincerely,

A handwritten signature in black ink that reads 'E. Caldwell'.

Emily Caldwell
General Counsel – Corporate
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
XD000ME**

I, Emily Caldwell, General Counsel - Corporate, 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 15 March 2024, the AFP received your request in the following terms:

"Reece Kershaw using AIPM over Christmas and New Years Eve since 2020"

SEARCHES

Searches for documents were undertaken by the Office of the Commissioner as the relevant business areas within the AFP with responsibility for the document to which you sought access.

WAIVER OF CHARGES

Given the request has totalled only 68 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.

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

I have identified 17 documents relevant to your request.

I have decided to refuse access to all documents, pursuant to sections 47F and 47E(c) of the Act.

For context, I note that consistent with AIPM policy and practice, the AIPM facilities are only available to members of the policing community for personal use on a case by case basis where they are not operationally required for AIPM programmed events. Any such use of the AIPM under these circumstances must be paid personally, and at a commercial rate for the use of the facilities.

A schedule of each of document and details of my decision in relation to each document is at Annexure B.

My reasons for this decision are set out below.

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

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."*

The FOI Guidelines at paragraph [6.114] state the following in respect of section 47E(c):

For this exemption to apply, the documents must relate to either:

- the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational 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 eligibility for progression (footnotes omitted).

The document have been identified as being exempt under section 47E(c). This material contains information relating to the travel and accommodation arrangements of the Commissioner. The public disclosure of this information could expose the Commissioner to unwelcome behaviour from hostile actors. Law enforcement employees have been a target of planned and actual attacks in Australia.

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, and wellbeing, of AFP appointees and the Commissioner, I am satisfied that releasing this information could have a substantial adverse effect on the management of personnel within the Commonwealth.

However, I must give access to this information unless, in the circumstances, access at this time would be contrary to the public interest.

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.

I have considered the following factor 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.

Ultimately, 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. 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.

Accordingly, I find those parts of the document identifying staff names and contact information are exempt under section 47E(c) of the Act.

Material to which section 47F applies:

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 as exempt under this section of the Act contain personal information of individuals other than you. 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 regarding the personal travel of the Commissioner.

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.

I find release of this personal information to be unreasonable. The information is not well known nor available from publicly available sources. Furthermore, consent has not been granted on the release of the Commissioner's personal travel.

However, I must give access to the documents unless, in the circumstances, access at this time would on balance be contrary to the public interest. 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); and
- (b) the fact that the information is not on the public record or available from publicly accessible sources.

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.

Accordingly, I find the documents or parts of documents are exempt under section 47F 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

OFFICIAL

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/>.

OFFICIAL

SCHEDULE OF DECISION

Document No	Folio No	Author	Description	Exemption	Reason
1	1-14	Australian Federal Police (AFP)	Email	Exempt in full	s47E(c) s47F
2	15	AFP	Invoice	Exempt in full	s47E(c) s47F
3	16	AFP	Receipt	Exempt in full	s47E(c) s47F
4	17-20	AFP	Email	Exempt in full	s47E(c) s47F
5	21	AFP	Invoice	Exempt in full	s47E(c) s47F
6	22	AFP	Receipt	Exempt in full	s47E(c) s47F
7	23	AFP	Invoice	Exempt in full	s47E(c) s47F
8	24	AFP	Invoice	Exempt in full	s47E(c) s47F
9	25-44	AFP	Email	Exempt in full	s47E(c) s47F
10	45	AFP	Invoice	Exempt in full	s47E(c) s47F
11	46-50	AFP	Email	Exempt in full	s47E(c) s47F
12	51	AFP	Receipt	Exempt in full	s47E(c) s47F
13	52-59	AFP	Email	Exempt in full	s47E(c) s47F
14	60-63	AFP	Email	Exempt in full	s47E(c) s47F
15	64-66	AFP	Email	Exempt in full	s47E(c) s47F

OFFICIAL

16	67	AFP	Invoice	Exempt in full	s47E(c) s47F
17	68	AFP	Invoice	Exempt in full	s47E(c) s47F

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