AFP
AUSTRALIAN FEDERAL POLICE

FREEDOM OF INFORMATION

GPO Box 401 Canberra City ACT 2601
Telephone 02 6131 6131
Email foi@afp.gov.au
www.afp.gov.au
ABN 17 864 931 143

Our ref: CRM 2016/388

21 March 2016

Mr Ben Fairless

By email: foi+request-1568-fb0390eb@righttoknow.org.au

Dear Mr Fairless,

Freedom of Information request re: CRM 2016/324

I refer to your email dated 22 February 2016 under the *Freedom of Information Act 1982* (the Act) seeking the following:

> *"...a copy of all documents related to the above case file [CRM2016/324], including but not limited to:*
> - *Case notes made by the FOI Officer involved in making a decision*
> - *Correspondence between the FOI Officer and other departments within the AFP*
> - *Correspondence and file notes of others within the AFP which relate to CRM 2016/324."*

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 23 February 2016 and in accordance with section 11C of the Act, it has been decided not to publish the documents in part in respect of your request.

Yours sincerely,

Nathan Scudder
Coordinator
Freedom of Information
Australian Federal Police

STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY BEN FAIRLESS

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 February 2016, this office received your email in which you requested:

> *"...a copy of all documents related to the above case file [CRM2016/324], including but not limited to:*
> - *Case notes made by the FOI Officer involved in making a decision*
> - *Correspondence between the FOI Officer and other departments within the AFP*
> - *Correspondence and file notes of others within the AFP which relate to CRM 2016/324."*

SEARCHES

In relation to this request, the following searches were undertaken:

a) a search of the CRM2016/324 file and a copy of the documents on those file was made; and

b) a search of all records held by AFP case officers with responsibility for matters relating to the documents to which you sought access.

DECISION

I have identified 23 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 some of the documents itemised at Annexure B are released to you in their entirety. Some of the documents that relate to your request are released with deletions pursuant to subsection/s 47F and 47E(d) and of the Act. Some of the documents that relate to your request are exempt in full, pursuant to subsection/s 37(2)(b), 47E(d) and 47F of the Act.

My reasons for this decision are set out below.

WAIVER OF CHARGES

Further, as your request is predominately your personal information, I am using my discretion and 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 37(2)(b) apply:

Subsection 37(2)(b) of the Act provides that:

> *"(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
>
> *...*
>
> *(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;"*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information that would disclose methods and procedures used by the AFP in investigations of breaches of the law. Disclosure of this information would be reasonably likely to prejudice the effectiveness of those methods and procedures as these methods and procedures are not generally known to the public.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 37(2)(b) 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 during the course of investigation into breaches or possible breaches of the law, as it reveals how information is obtained and actioned for the purposes of investigating these matters.

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;
- *Freedom of Information Act 1982*;
- Guidance material 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
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 5128
Sydney NSW 2001

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.

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 2016/388
RELEASE OF DOCUMENTS – BEN FAIRLESS

Document No	Folio No	Date	Author	Description	Exemption	Reason
1	1-5	14/1/16	Australian Federal Police (AFP)	FOI Checklist	Released in part: Folio 1 – s47F Released in full: Folios 2-5	**s47F** Deletions are made on the grounds that disclosure would involve the unreasonable provision o personal details of people other than the FOI applicant. Access must be given unless it would be contrary to the public interest.
2	6		AFP	Cover sheet – Review Phase	Released in full	
3	7-8	24/2/16	AFP	Email from Nathan Scudder to Ben Fairless	Released in full	
4	9		AFP	Cover sheet – decision phase	Released in full	
5	10-13	8/2/16	AFP	Letter	Released in part: Folio 11 – s47F Released in full: Folios 10, 12, 13	
6	14-16		AFP	Charges Phase – cover sheet/Schedules	Released in full	
7	17		AFP	Charges preliminary	Released in full	

				draft estimate		
8	18-21	20/1/16	AFP	Draft Estimate of charges – not sent	Released in full	
9	22		AFP	Preliminary Estimate of charges	Released in full	
10	23-24		AFP	Cover sheet – consultation phase/30Schedule	Released in full	
11	25-26		AFP	Chaser/Searches cover sheet/Schedule	Released in full	
12	27-28	3/2/16	AFP	Email to line area	Released in part: S47F, s47E(d)	**s47E(d)** 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.
13	29		AFP	ICT Security- Audit request	Released in part: S47E(d), s47F	
14	30-31	20/1/16	AFP	Emails	Released in part: S47F, s47E(d)	
15	32-33	19/1/16	AFP	Email and attachment	Released in part: S47F, s47E(d)	
16	34		AFP	Application Phase – cover sheet	Released in full	
17	35-36	29/2/16	AFP	Email re internal	Released in part:	

				review	Folio 35 – s47E(d) Released in full: Folio 36	
18	37-38	2/2/16	AFP	Email	Released in part: Folio 37 – s47F Released in full: Folio 38	
19	39-40	22/1/16	Ben Fairless	Email	Released in part: Folio 39 – s47F Released in full: Folio 40	
20	41-45	22/1/16	AFP	Email and section 24 notice	Released in full: Folios 41, 42, 44, 45 Released in part: Folio 43	
21	46-47	15/1/16	AFP	Email acknowledgement	Released in part: Folio 46 – s47F Released in full: Folio 47	
22	48	14/1/16	Ben Fairless	FOI Request	Released in part: S47F	
23	49-559		AFP	Documents relating to request	Exempt in full: s47F, s37(2)(b), s47E(d)	**s37(2)(b)** Deletions are made on the grounds that release would disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which

						would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.

Authorised Decision Maker: Nathan Scudder
Coordinator
Freedom of Information
Australian Federal Police

Date of Decision: 21 March 2016

AFP AUSTRALIAN FEDERAL POLICE

FREEDOM OF INFORMATION CHECKLIS

Applicant	Ben Fairless (right to know)	CRM No	2016/324
Legal Representative		File No	2015/0000
Significant matter	YES / NO	Date Received	14 Jan 2016
Request Date	14 January 2016	Start Date	14 Jan 2016
FOI Officer	s47F	First Due Date	13 Feb 2016
Extension of time sought			
New Due Dates	→ →	→	
Scope	Copy of all emails sent to Apple.com APAC Police Requests email. 1/1/15 - 1/2/15, including replies to the emails.		

Category	Action	Yes	No	Remarks
RECEIPT OF APPLICATION	Sufficient information provided ☐ Photo ID ☐ Power of Attorney ☐ Authority to Act ☐ Next of Kin	☐	☐	If applicable: Letter sent requesting ID / Authority to Act Date:
	CRM entered	☑	☐	
	Folder in **H:/ Drive** created. **Application uploaded to H:/ Drive**	☑ ☑	☐ ☐	
	Acknowledgement sent	☑	☐	Date: 15 Jan 2016
	File cover ordered File number recorded in CRM	☐ ☐	☐ ☐	
	Reporting (if applicable): - Minister's Report - OSB Report - AFP Media	☑ ☐ ☑	☐ ☑ ☐	
INITIAL PROMIS ASSESSMENT	INITIAL PROMIS CHECK	☐	☑	PROMIS #: Person Entities: Number of Cases: Log Entries: Witnesses/Consults:
IDENTIFICATION OF RELEVANT DOCUMENTS	PROMIS CHECK Chasers sent ICT Audit to: - 19 January 2016 - - - AFP National Media search (significant matters) External searches (Austlii, Google) **REFER TO SEARCHES/CHASERS SCHEDULE**	☑ ☐ ☐ ☑	☐ ☑ ☑ ☐	Response due by: 29.1.16.

FREEDOM OF INFORMATION ACT 1982 (COMMONWEALTH)
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INTENTION TO REFUSE/ CONSULTATION RE ACCESS (S24)	Intention to Refuse letter	☑	☐	Date: 22.1.16
	Consultation undertaken with applicant	☑	☐	22.1.16, 2.2.16, Date/s:
	Response received from Applicant within 14 days	☑	☐	Nil response: Deemed withdrawn:
	Refusal Letter sent	☐	☐	Date:
	CRM / Minister's Report updated	☐	☐	
TRANSFER/ PARTIAL TRANSFER	**Transfer/Partial Transfer to:** - -	☐	☐	
	Applicant notified	☐	☐	Date:
	CRM / Minister's Report updated	☐	☐	
EXTENSION OF TIME s15AA	Letter to Applicant seeking extension	☐	☐	Date:
	Response received from Applicant	☐	☐	Agree / Disagree New date:
	Letter to IC advising of extension	☐	☐	Date:
	CRM / Minister's Report updated	☐	☐	
CONSULTATION PHASE	State authorities (add 30 days): - - -	☐	☐	Consultation letters sent Date:
	Cth authorities (no extra time): - - -	☐	☐	Response due by:
	Third Parties & Businesses (add 30 days): - - -	☐	☐	
	Foreign Govt/International Organisation (add 30 days): -	☐	☐	
	OR			
	REFER TO CONSULTATION SCHEDULE ATTACHED	☐	☐	
	Consult delay letter sent	☐	☐	Date:

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)
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OAIC EXTENSION OF TIME s15AB / s15AC	Letter to applicant advising of extension application submitted to OAIC	☐	☐	Date:
	Application to OAIC seeking extension: - s15AB - s15AC	☐ ☐	☐ ☐	Date: Date:
	Response received from OAIC: - s15AB - s15AC	☐ ☐	☐ ☐	Agree/Disagree New date: Agree/Disagree New date:
	CRM / Minister's Report updated	☐	☐	

PROCESSING CHARGES	Charges applicable **REFER TO CHARGES SCHEDULE ATTACHED**	☐ ☐	☐ ☐	Notes:
	Withdrawn by applicant Deemed withdrawn (unpaid charges)	☐ ☐	☐ ☐	Date: Date:

ASSESSMENT OF DOCUMENTS	Assessment, Mark up and Reasons for Decision prepared Routine (Low-Med) matters: - Forwarded to Team Leader for QA	☐	☐	Date:
	Significant matters (High-VHigh): - Forwarded to CFOI for QA - Forward to Line Area for QA of markups/redacted version	☐ ☐	☐ ☐	Date: Date:
	Return to case officer for redacting/finalisation	☐	☐	Date:
FINAL CLEARANCE/ BRIEFING	Significant matters (High-VHigh): - Final clearance by Line Area - QA by TL or Other member	☐ ☐	☐ ☐	Date: Date:
	Significant matters: - Notification to MHA/LELO, ML and AFP Media	☐	☐	Date:
	Routine matters: - Final QA by Band 6 or Band 8	☐	☐	Date:
RELEASE OF DOCUMENTS	Decision letter prepared and signed	☐	☐	
	Significant matters: - Final QA by CFOI	☐	☐	Date:

FREEDOM OF INFORMATION ACT 1982 (COMMONWEALTH)
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	File and decision returned to case officer for sending	☐	☐	Date:
FINALISATION	Finalisation: - Final QA by case officer - Sent Electronically - Sent Registered post	☐ ☐ ☐	☐ ☐ ☐	Date:
	CRM and Minister's Report updated	☐	☐	

DISCLOSURE LOG	5-10 Days following notification of decision, documents may be published on the disclosure log: - Documents re-viewed and prepared for disclosure log - TL QA - CFOI QA - Sent to Online services for publication	☐ ☐ ☐	☐ ☐ ☐	Date Published:

INTERNAL REVIEW	Application for review of decision received. Separate folder created in H Drive folder	☐	☐	Date: .....
	Acknowledgement to Applicant	☐	☐	Date:
	Internal Reviewer engaged	☐	☐	Name:
	Date of finalisation: - Decision sent and - copy on file	☐	☐	Date:
	CRM / Minister's Report updated	☐	☐	

IC Notification/ Preliminary Enquiries/ Review	**IC Notification received**: • separate folder created in H drive • CRM updated • File to CFOI	☐ ☐ ☐	☐ ☐ ☐	Date: Date: Date:
	IC Preliminary enquiries received: • CRM updated • File to CFOI • Response sent to IC	☐ ☐ ☐	☐ ☐ ☐	Date: Date: Date:

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

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	IC Notice of Review received: • CRM updated • Section 54P Notice to third parties sent • Copy of Section 54P notice provided to OAIC • Response sent to IC	☐ ☐ ☐ ☐ ☐	☐ ☐ ☐ ☐ ☐	Date: Date: Date: Date: Confidential / Open Response
	IC Decision received	☐	☐	Upheld / Alternate Date:
	55G Decision – • Actioned • Appealed	☐ ☐	☐ ☐	Date: Date:
	CRM / Minister's Report updated	☐	☐	

AAT Review	Application for review received - Separate folder created in H Drive	☐	☐	Date: .....
	Forwarded to Legal	☐	☐	Date: .....
	Hearing Date	☐	☐	Date:.....
	Other Details:			
	CRM / Minister's Report updated	☐	☐	

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

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REVIEW PHASE

Place all correspondence in <u>date order</u> relating to the request behind the orange sheet.

- **Internal Review request**
- **Acknowledgement letter**
- **IR Decision letter**
- **IC Review documents/correspondence**
- **Any other relevant documents or correspondence**

Ellery, Jacqueline

From: Ellery, Jacqueline on behalf of FOI
Sent: Wednesday, 10 February 2016 9:11 AM
To: 'Ben Fairless'
Subject: RE: Internal review of Freedom of Information request - 2015 Requests for Information - Apple [SEC=UNCLASSIFIED]

UNCLASSIFIED

Dear Mr Fairless

I acknowledge receipt of your request on 8 February 2016 for an internal review of a decision under the Freedom of Information Act 1982.

Your application is currently being processed, and the person conducting the internal review will notify you within 30 days after the day on which the application was received by this agency.

Should you require any further assistance please contact this office.

Yours sincerely

JACQUELINE ELLERY
TEAM LEADER, FREEDOM OF INFORMATION
CHIEF COUNSEL PORTFOLIO
AUSTRALIAN FEDERAL POLICE

-----Original Message-----
From: Ben Fairless [mailto:foi+request-1498-2465996d@righttoknow.org.au]
Sent: Monday, 8 February 2016 8:45 PM
To: FOI
Subject: Internal review of Freedom of Information request - 2015 Requests for Information - Apple

Dear Australian Federal Police,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Australian Federal Police's handling of my FOI request '2015 Requests for Information - Apple'.

The Officer has refused my request prematurely. I asked the department if a revised scope would remove the restriction, I did not actually revise my request.

It is common courtesy to consult with an applicant on the scope, and the Officer has not fulfilled this obligation in good faith. I remain committed to working with the department on revising my scope The department has also not provided any evidence to support its contention, such as where those hours would be allocated. Can the department please advise what timeframe would be sufficient to reduce the scope of this request.

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

Please treat this as both an FOI complaint and an internal review.

A full history of my FOI request and all correspondence is available on the Internet at this address:
https://www.righttoknow.org.au/request/2015_requests_for_information_ap

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THE AUSTRALIAN FEDERAL POLICE

Yours faithfully,

Ben Fairless

Please use this email address for all replies to this request:
foi+request-1498-2465996d@righttoknow.org.au

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:
https://www.righttoknow.org.au/help/officers

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

UNCLASSIFIED

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

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DECISION PHASE

Place all correspondence in <u>date order</u> relating to the request behind the pink sheet.

- **Line area clearance process, incl final clearance documentation**
- **Brief to MHA if applicable**
- **Decision letter/schedule**
- **Notification to Media/Ministerial if applicable**
- **Documents – separated by an identifying sheet:**
  - **Original documents**
  - **Markedup documents**
  - **Final documents**

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

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THE AUSTRALIAN FEDERAL POLICE

AFP
AUSTRALIAN FEDERAL POLICE

FREEDOM OF INFORMATION

GPO Box 401 Canberra City ACT 2601
Telephone 02 6131 3161
Email foi@afp.gov.au
www.afp.gov.au
ABN 17 864 931 143

Our ref: CRM 2016/324

E-MAILED
8/2/16 - 3:55pm

8 February 2016

Mr Ben Fairless
Email: foi+request-1498-2465996d@righttoknow.org.au

Dear Mr Fairless,

FREEDOM OF INFORMATION REQUEST

I refer to your email dated 14 January 2016 for documents held by the Australian Federal Police (AFP) pursuant to the *Freedom of Information Act 1982* (the Act). Under the Act you requested:

> *"A copy of all emails sent to the Apple.com APAC Police requests email address (apac police requests@apple.com) from the 1st of January 2015 until 31 December 2015, and any replies to those emails.*
>
> *The above request is subject to the below exclusions:*
> - *Duplicate of documents; and*
> - *Personal information of individuals other than AFP members."*

The Commissioner of the Australian Federal Police, being the principal officer, has authorised me under section 23 of the Act to make decisions on behalf of the AFP in respect of the Act.

I reference our previous notification of our intention to refuse access dated 22 January 2016 sent to you. In this notification you were advised of the extensive resources that may be required to locate, retrieve and process the relevant documents to meet your request.

Your response dated 22 January 2016 has been assessed and I believe that your request still remains onerous. Preliminary enquiries have been made and it has been determined that a minimum of 69 hours of Freedom of Information staff time would be required for tasks including examination of documents, third party consultations and line area clearances. I therefore do not believe you have sufficiently narrowed your request to remove the grounds for refusal.

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

Accordingly the AFP maintains that to process this request in its current form would substantially and unreasonably divert the resources of the AFP from its other operations including core policing and investigational functions.

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THE AUSTRALIAN FEDERAL POLICE

I have decided to refuse you access to the requested documents pursuant to the provisions of section 24AA of the Act.

The following attachments form part of my decision regarding the refusal of access.

Annex A.	Sections 24AA and 24AB of the Act
Annex B.	Review and Complaints Rights

Yours sincerely,

s47F

Jasmine Millar
Acting Coordinator
Freedom of Information
Australian Federal Police

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

DOCUMENT HAS BEEN RELEASED
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24AA When does a *practical refusal reason* exist?

(1) For the purposes of section 24, a ***practical refusal reason*** exists in relation to a request for a document if either (or both) of the following applies:

(a) the work involved in processing the request:

(i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or

(ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions;

(b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

(2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:

(a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;

(b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:

(i) examining the document; or

(ii) consulting with any person or body in relation to the request;

(c) making a copy, or an edited copy, of the document;

(d) notifying any interim or final decision on the request.

(3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:

(a) any reasons that the applicant gives for requesting access; or

(b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or

(c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

24AB What is a *request consultation process*?

Scope

(1) This section sets out what is a ***request consultation process*** for the purposes of section 24.

Requirement to notify

(2) The agency or Minister must give the applicant a written notice stating the following:

(a) an intention to refuse access to a document in accordance with a request;

(b) the practical refusal reason;

(c) the name of an officer of the agency or member of staff of the Minister (the ***contact person***) with whom the applicant may consult during a period;

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(d) details of how the applicant may contact the contact person;

(e) that the period (the ***consultation period***) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

(3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.

(4) For the purposes of subsection (3), ***reasonable steps*** includes the following:

(a) giving the applicant a reasonable opportunity to consult with the contact person;

(b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

(5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

(6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

(a) withdraw the request;

(b) make a revised request;

(c) indicate that the applicant does not wish to revise the request.

(7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:

(a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or

(b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

(8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

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No more than one request consultation process required

(9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.

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CHARGES PHASE

Place the charges correspondence in <u>date order</u> relating to the request behind the red sheet.

- **Charges calculation/s**
- **Charges estimate letter**
- **Charges decision letter if applicable**
- **Correspondence from the applicant seeking waiver**
- **Correspondence from the applicant making payment of the charges**

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AFP AUSTRALIAN FEDERAL POLICE	FREEDOM OF INFORMATION CHARGES SCHEDULE

Applicant		CRM No	
FOI Officer		Due Date	

PROCESSING CHARGES

Action	Yes	No	Remarks
Create Charges Excel spread sheet	☑	☐	
Estimate of charges letter	☑	☐	Date:
Full payment received	☐	☐	
Request for waiver	☐	☐	
Charges waived by decision maker	☐	☐	
Request for IR of charges to be waived - applicant notified - granted/not granted	☐ ☐ ☐	☐ ☐ ☐	
Where no response has been received within 30 days for payment of fees or request for waiver –	☐	☐	
CRM / Minister's Report updated	☐	☐	

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FREEDOM OF INFORMATION
CHARGES TIME RECORDING SCHEDULE

CRM

DATE	TIME START	TIME FINISH	TASK / ACTIVTY	OTHER REMARKS
8.2.16	11.10 am	11.50 am.	Printing of revelant doc's.	
	12.10 pm	12.25 p.m.	Calculating charges - ISAB negotiations	

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FOI CHARGES ESTIMATE (NOV 2010)			
(insert data in shaded boxes only)			
BASIC DATA ESTIMATE			
Number of relevant files	1		Number of agency's files that contain at lea relevant document.
Number of relevant pages	350		Total number of pages of all documents rel the request (including exempt pages)
Number of relevant documents	139		Number of agency documents falling within terms of the request.
Number of fully exempt pages			Number of pages of relevant documents to exempted in full.
Number of pages released with deletions	340		Number of pages of relevant documents to released in part.
Number of documents for access via inspection	0		Number of documents for which access is t supervised inspection of the document.
Percentage of request relating to applicant's own personal information	0%		Agencies may not charge for FOI requests extent that they relate to personal informat the FOI applicant
Number of third parties to consult	0		Applies to non-Commonwealth consultees (individuals, businesses, other governments count each party once if referred to in mul documents.
PROCESS - search and retrieval	TIME (in hours)	COST @ $15 per hr	
Search and retrieval (10 mins per file)	0.17	$2.50	
Search files and tag relevant pages (45 mins average per file)	0.75	$11.25	
preparing schedules detailing all relevant documents (basic data entry e.g. doc no, date, description - 30 minutes per 10 documents)	6.95	$104.25	
Search & Retrieval Subtotal	7.87	**$118.00**	
PROCESS - decision-making	TIME (in hours)	COST @ $20 per hr	
examine relevant pages for decision making (5 mins per relevant page).	29.17	$583.33	
exempted pages (5 mins extra per page to cover additional consideration of complexity of material, elements of exemption claim, public interest etc).	0.00	$0.00	
pages released with deletions (5 mins extra per page to cover time needed to redact the material)	28.33	$566.67	
consult third parties (2 hours per third party)	0.00	$0.00	
preparation and notification of decision (3 hours for statement of reasons, plus 4 hours per 250 relevant pages to complete schedule to record decision) - NB if several exemptions are involved, further time may be required.	8.60	$172.00	
Decision-making Subtotal (before deduction of 5 hours)	66.10	$1,322.00	
Decision-making Subtotal (after deduction of first 5 hours free for all)	61.10	**$1,222.00**	
ACCESS - view / inspect	TIME (in hours)	COST @ $6.25 per 1/2 hr	
Access given through inspection of documents (10 min per document, rounded up to nearest 1/2 hour)	0.00	0.00	
Access given through hearing and/or viewing of documents e.g audio/visual material - insert duration of files and add 1/2 hour set-up and pack-up time (rounded up to nearest 1/2 hour)		0.00	
Inspection/Viewing Subtotal	0.00	**$0.00**	
ACCESS - copy and post	PAGES	COST @ 10c a page	
Photocopies of estimated released docs (including those with deletions)	350	**$35.00**	
Packaging and postage-insert estimated cost	N/A		
Photocopying & Postage Subtotal		**$35.00**	
ESTIMATED TOTALS			This amount takes into account any reduct the cost as a result of the application invol personal information
NUMBER OF RELEASED PAGES		**350**	
TIME (in hours)		**68.97**	
TOTAL COST		**$1,375.00**	
Financial hardship/public interest discount		**$0.00**	The percentage discount to be applied if ag takes into account financial hardship or pul interest under s 29 of the FOI Act.
TOTAL COST (after discount)		**$1,375.00**	
DEPOSIT REQUIRED		**$343.75**	

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FREEDOM OF INFORMATION

GPO Box 401 Canberra City ACT 2601
Telephone (02) 6131 6131
Email foi@afp.gov.au
www.afp.gov.au
ABN 17 864 931 143

DRAFT

Our Ref: CRM 2016/324

20 January 2016

Mr Ben Fairless
Email: foi+request-1498-2465996d@righttoknow.org.au

Dear Mr Fairless,

Your Freedom of Information Request: Estimate of Charges

I refer to your email dated 14 January 2016 in which you seek access to documents under the *Freedom of Information Act* 1982 (the Act).

The Freedom of Information (Fees and Charges) Regulations (the Regulations) prescribes that charges can be levied in respect of a request for access to documents. These charges are set out by the Regulations and are for search and retrieval of documents, decision making and provision of access.

I have decided that you are liable to pay a charge in respect of the processing of your request. I am an authorised decision maker under section 23 of the Act.

My preliminary assessment of the charge is $2,477.95.

search and retrieval, tag relevant pages	$298.75
examine relevant pages for decision making (includes exempted pages and pages released with deletions)	$1,800.00
preparing schedules and preparation and notification of decision	$303.20
Photocopying	$76.00
TOTAL COST	**$2,477.95**

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The Regulations prescribe that where a charge is imposed and exceeds $25.00 but is less than $100.00, a deposit of $20.00 may be sought and where the charge exceeds $100.00, a deposit of up to 25% of the estimated charges may be sought. Based on the preliminary estimate of charges for your request which is $2,477.95, I have decided you are required to pay a deposit of $619.49.

Within 30 days of receipt of this notice you are required to either:

- agree to pay the charge; or
- agree to pay a deposit of $619.49 with the remainder to be paid prior to receipt of documentation, or
- contend that the charge
  - has been wrongly assessed, or)
  - should be reduced, or)
  - not imposed, or both; or)

) You should give full reasons for so contending
- withdraw your request.

Your charges estimate is based on approximately 760 pages which would be partially released. In addition, the first five hours of decision-making time has been deducted from the calculations.

Payment should be addressed to the Freedom of Information Team, GPO Box 401, Canberra ACT 2601, and made out to the Collector of Public Monies.

You may contend that the charge has been wrongly assessed, or should be reduced or not imposed. In deciding whether to reduce or not to impose a charge, the decision maker has discretion to consider reduction or remission of charges for any reason, including the following reasons:

- the payment of the fee or a part of the fee would cause financial hardship to the applicant or person on whose behalf the application was made; or
- the giving of access is in the general public interest or in the interest of a substantial section of the public.

The onus rests with the applicant to provide adequate supporting evidence to clearly demonstrate that either one of the relevant criteria has been met or that the overall circumstances justify reduction or remission of charges. If you are requesting the charges be waived or reduced in this instance, please provide adequate supporting evidence to clearly demonstrate that either one of the relevant criteria has been met or that the overall circumstances justify remission. To assist you in making a claim for remission or reduction of the processing charges on financial hardship grounds, an application form is available from this office on request.

To make an application for the remission or reduction of the processing charges on the grounds of public interest, you should provide your reasons in writing to the Australian Federal Police Freedom of Information Team.

If you fail to notify this office in a manner mentioned above within 30 days of receipt of this notice it will be taken that you have withdrawn your request. In accordance with Section 31 of the Act, the 30 day limit for processing your request is suspended from the day that you receive this notice and resumes on either the day you pay the charge (in full or the required deposit) or the day on which this agency makes a decision not to impose a charge. Further, there is no obligation on the Australian Federal Police to provide documents relevant to your request until payment is made in full or until a decision is made not to impose a charge.

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