



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: CRM2016/420

23 March 2016

Owen Kelly

Via email: foi+request-1712-52604144@righttoknow.org.au

Dear Mr Kelly,

Freedom of Information request

I refer to your application dated 2 March 2016, under the *Freedom of Information Act 1982* (the Act) seeking the following:

"Documents relating directly to the current number of IMSI catchers owned by the AFP as of 2016. An "International Mobile Subscriber identity" catcher (IMSI catcher) may go by the following brand names including Stingray, SimSucker, Kingfish, Harpoon, Amberjack, or Hailstorm."

Attached at Annexure A to this letter is my decision and statement of reasons for that decision.

Information Publication Scheme (IPS)

In accordance with section 11C of the Act, it has been decided not to publish the documents in respect of your request.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jacqueline Ellery', is located below the 'Yours sincerely,' text.

Jacqueline Ellery
Team Leader
Freedom of Information
Australian Federal Police

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
Owen KELLY**

I, Jacqueline Ellery, 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.

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

BACKGROUND

On 21 March 2016, this office received your application in which you requested:

"Documents relating directly to the current number of IMSI catchers owned by the AFP as of 2016. An "International Mobile Subscriber identity" catcher (IMSI catcher) may go by the following brand names including Stingray, SimSucker, Kingfish, Harpoon, Amberjack, or Hailstorm."

In relation to your request, I have decided to make a decision pursuant to section 25 of the Act. This decision letter serves as a notice under subsection 25(2) of the act. I have decided to neither confirm nor deny the existence of the documents you have requested. The reasons for my decision are set out below.

REASONS FOR DECISION

The reason for my decision to notify you that I neither confirm nor deny the existence of the documents requested is that the documents, assuming they existed would be exempt under subsection 33(a)(iii) and 37 of the Act and that to inform you of the existence or non-existence of the documents you have requested, would itself cause that document to be exempt.

Subsection 25(1) and (2) of the Act provide that:

- (1) Noting in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a documents where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be an exempt document by virtue of section 33 or subsection 37(1).
- (2) Where a request relates to a document that is, or if it existed would be, of a kind referred to in subsection (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister, as the case may be, neither confirms nor denies the existence, as a document of the agency or an official document of the Minister, of such a document but that, assuming the existence of such a document, it would be

an exempt document under section 33 or subsection 37(1) and, where such a notice is given:

- (a) Section 26 applies as if the decision to give such a notice were a decision referred to in that section; and
- (b) The decision shall, for the purposes of Part VI, be deemed to be a decision refusing to grant access to the document in accordance with the request for the reason that the document would, if it existed, be an exempt document under section 33 or subsection 37(1), as the case may be.

Subsection 33(a)(iii) of the Act provides that:

"A document is an exempt document if disclosure of the document under this Act:

- (a) *would, or could reasonably be expected to, cause damage to:*
...
- (iii) *the international relations of the Commonwealth..."*

I find that notifying you as to the existence or non-existence of any documents relevant to your request and release of any documents relevant to your request, if they existed, would reveal information relating to a foreign government and to Australia's involvement or non-involvement in certain activities with that foreign government. This would substantially affect the Commonwealth's relationship with that country and weaken the bilateral relations of Australia.

Subsection 37(1)(a) of the Act provides that:

"(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- (a) *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;"*

I find that notifying you as to the existence or non-existence of any documents relevant to your request and release of any documents relevant to your request, if they existed, would reveal information which if disclosed would or could reasonably be expected to prejudice the conduct of a current investigation.

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.