

Our ref: CRM 2017/103

28 November 2016

CD

C/- Right to Know

By email: Foi+request-2180-29a8da36@righttoknow.org.au

Dear CD

Freedom of Information request

I refer to your application dated 29 August 2016 under the *Freedom of Information Act 1982* (the Act) seeking the following:

"I am writing to you today under the Freedom of Information Act requesting access to documents containing correspondence between the Australian Federal Police and the Defence Department.

Specifically, I am seeking correspondence, held by the Australian Federal Police, regarding a "referral from the Department of Defence regarding the possible unauthorised release of government information" as outlined in this article; <http://www.smh.com.au/federal-politics/political-news/japanese-pm-considers-call-to-malcolm-turnbull-in-attempt-to-rescue-bid-to-build-australian-subs-20160422-gocmb1.html>

To be clear, I am not seeking exempt documents that pertain to "national security", "Cabinet Documents" nor to the actual "investigation" specifics either but rather the correspondence held by the Australian Federal Police that pertains to the progress of this referral by the Department of Defence. I nominate documents created between 20/4/16 to 29/8/16 as the scope relevant to this request."

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 1 September 2016 it has been decided [to publish the documents in part in respect of your request. Publication of the documents and any relevant documents will be made on the AFP website at <http://www.afp.gov.au/about-the-afp/information-publication->

[scheme/routinely-requested-information.aspx](#) in accordance with timeframes stipulated in section 11C of the Act.

Yours sincerely,



Nathan Scudder
Coordinator
Freedom of Information
Australian Federal Police

STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY CD

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 29 August 2016, this office received your letter/application in which you requested:

"I am writing to you today under the Freedom of Information Act requesting access to documents containing correspondence between the Australian Federal Police and the Defence Department.

Specifically, I am seeking correspondence, held by the Australian Federal Police, regarding a "referral from the Department of Defence regarding the possible unauthorised release of government information" as outlined in this article; <http://www.smh.com.au/federal-politics/political-news/japanese-pm-considers-call-to-malcolm-turnbull-in-attempt-to-rescue-bid-to-build-australian-subs-20160422-gocmb1.html>

To be clear, I am not seeking exempt documents that pertain to "national security", "Cabinet Documents" nor to the actual "investigation" specifics either but rather the correspondence held by the Australian Federal Police that pertains to the progress of this referral by the Department of Defence. I nominate documents created between 20/4/16 to 29/8/16 as the scope relevant to this request."

On 22 September 2016, you agreed to an extension of time pursuant to section 15AA of the Act.

On 25 October 2016, a further extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AB of the Act to notify you of a decision by 13 December 2016, however this should read 27 November 2016.

SEARCHES

In relation to this request, a search was undertaken by AFP Crime Program for documents within scope.

DECISION

I have identified seven 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 22(1)(a)(ii), 34(3) and 47F of the Act.

My reasons for this decision are set out below.

WAIVER OF CHARGES

Further, given that the request has totalled only 22 pages, I am 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 22(1)(a)(ii) apply:

Subsection 22(1)(a)(ii) of the Act provides that:

- "(1) *Where:*
- (a) *an agency or Minister decides:*
 - (ii) *that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request;"*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information which is considered irrelevant to the request. I have determined that information contained in some of the folios should be deemed to be exempt because it does not come within the scope of your application and thus falls outside the ambit of your request. By way of further explanation, these exempt folios cover information which refers to other issues which are not mentioned in your FOI application.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 22(1)(a)(ii) of the Act.

Folios to which subsection 34(3) apply:

Subsection 34(3) of the Act provides that:

- "(3) *A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed."*

The documents or parts of documents identified in the schedule as exempt under this section of the Act contain information which would reveal a Cabinet deliberation or decision which has not been disclosed. I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 34(3) 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;
- ❖ consultation with relevant Commonwealth Agencies;
- ❖ *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

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

Further, 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.

Information about the IC review process 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

Document	Folio #	Description	Exemption
1	1	s22(1)(a)(ii)	s22(1)(a)(ii) Exempted material would disclose information that would reasonably be regarded as irrelevant to the request.
	2	s47F	s47F Deletions are made on the grounds that disclosure would involve the unreasonable provision of personal details of people other than the FOI applicant. Access must be given unless it would be contrary to the public interest.
	5	s22(1)(a)(ii)	
	6	s22(1)(a)(ii)	
	7	s22(1)(a)(ii)	
			s34(3) Deletions are made on the grounds that disclosure would divulge information which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.
	8	s34(3), s22	
	9	s22(1)(a)(ii)	
	10	s22(1)(a)(ii)	
	11	s22(1)(a)(ii)	
	12	s22(1)(a)(ii)	
	13	s34(3), s22	
	14	s22(1)(a)(ii)	
	15	s22(1)(a)(ii)	
	16	s22(1)(a)(ii)	
	17	s22(1)(a)(ii)	
	18	s22(1)(a)(ii)	
	19	s22(1)(a)(ii)	
		s34(3), s22	
	20	s22(1)(a)(ii)	
	21	s22(1)(a)(ii)	
		s47F	
	22	s22(1)(a)(ii)	
		s47F	
		s34(3), s22	
			Folios released in full are not scheduled.