

Our reference: 16/196162



AUSTRALIAN  
**CRIMINAL  
INTELLIGENCE  
COMMISSION**

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[www.acic.gov.au](http://www.acic.gov.au)

2 December 2016

Mr Ben Fairless

By email: [foi+request-2557-318007a7@righttoknow.org.au](mailto:foi+request-2557-318007a7@righttoknow.org.au)

Dear Mr Fairless,

### **Freedom of Information Request ACIC 16-31**

I refer to your request for access under the *Freedom of Information Act 1982* (the FOI Act) to:

*A copy of the current FOI Delegations, and any related directions issued in respect of FOI.*

We received your request on *Wednesday 2 November 2016* and the 30 day statutory period for processing your request commenced from the day after that date. A decision is therefore due to you by **Friday 2 December 2016**.

This is a decision made under the FOI Act in relation to documents within the scope of that request.

### **Documents identified**

I have identified 1 document as matching the description of your request. Details of the document are set out at **Annexure A**.

### **Authority and materials considered**

I am authorised under section 23 of the FOI Act to make a decision concerning the information you have requested access to.

In reaching my decision I have taken into consideration:

- the relevant provisions of the FOI Act;
- the contents of the relevant documents;
- relevant guidelines issued by the Office of the Australian Information Commissioner; and
- relevant Tribunal and Federal Court decisions concerning the operation of the FOI Act.

## Decision

I have decided that the document is partially exempt from release on the basis of section 47F of the FOI Act. An extract of the relevant exemption provision is at **Annexure B**. An explanation of the exemption relied upon is set out below.

### ***Section 47F – Public interest conditional exemption – personal privacy***

Section 47F of the FOI Act provides that a document or parts of a document are conditionally exempt if disclosure would involve the unreasonable disclosure of personal information about any person. Guidelines issued by the Information Commissioner at [6.116] state that '[p]ersonal information can include a person's name, telephone number [and] date of birth...' A number of documents falling within your request include the personal information of ACIC officers and other persons, including names and signatures.

The OAIC Guidelines at [6.131] also state that other factors considered to be relevant include:

- the nature of the information, that is, whether it is common or disclosure would result in serious consequences
- how the information was obtained, that is, covertly, in confidence or using information gathering powers
- the current relevance or age of the information
- whether it would shed light on the workings of government.

The OAIC guidelines further state at [6.139] that:

Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties. Such information may often also be publicly available, such as on an agency website.

Due to the nature of work undertaken at the ACIC, it is considered that special circumstances exist which make disclosure of personal information unreasonable. The role the ACIC plays in disrupting serious and organised crime means that the publication of names of employees would place those employees at considerable risk to their personal safety.

I have had regard to the factors in section 47F(2). In relation to the matters listed in that section, I consider that:

- a) the personal information is not well known;
- b) the persons to whom the information relates are not known to have been associated with the matters dealt with in the documents; and
- c) the information is not readily available from publicly accessible sources.

As such, I have found that the names of certain ACIC members of staff are exempt under section 47F of the FOI Act. Please note, I have not removed my own name, as I am known to be associated with freedom of information matters.

### ***Public Interest Considerations***

Section 11A(5) of the FOI Act requires that the ACIC must give access to documents that are conditionally exempt unless such access would, on balance, be contrary to the public interest. The public interest test for the conditional exemptions referred to above requires the ACIC to weigh the competing public interests and decide where the balance lies.

There are a number of public interest factors favouring access. They are that disclosure would:

- a) promote the objects of the FOI Act
- b) provide the Australian community with access to information held by the ACIC; and
- c) enhance the accountability and scrutiny of ACIC decision making.

There are a number of other factors that would render the release of this information as contrary to the public interest. These are that release could:

- a) reasonably be expected to prejudice the protection of an individual's right to privacy;
- b) compromise the effectiveness of the ACIC's law enforcement and intelligence gathering activities; and
- c) prejudice the ACIC's ability to take part in similar procedures in future.

On balance, I consider that the public interest factors against the disclosure of the documents outweigh the public interest factors in favour of disclosure. I have reached this conclusion because of the sensitivity of the information, the special circumstances surrounding the work that the ACIC undertakes and the fact that the information is not well known.

### **Disclosure Log**

Section 11C of the FOI Act provides that information about any documents released under that Act must be published on the ACIC's website within 10 days of release, subject to the exemptions set out in section 11C(1)(a)-(d).

### **Your review rights**

If you are dissatisfied with this decision you can apply for internal review or review by the Information Commissioner. You do not have to apply for internal review before seeking the Information Commissioner's review.

#### ***Internal review***

You may seek internal review by making an application in writing to the ACIC within 30 days of being notified of this decision. A written application for a review should be sent to the FOI Coordinator at [foi@acic.gov.au](mailto:foi@acic.gov.au), or by post to:

FOI Coordinator  
Australian Criminal Intelligence Commission  
GPO Box 1936  
Canberra ACT 2601

#### ***Information Commissioner review***

Alternatively, you may apply in writing for review by the Information Commissioner. In making your application you need to provide:

- an address for notices to be sent (this can be an email address)
- a copy of this decision.

It would also help if you set out the reasons for review in your application. Requests for review must be in writing and can be made via the website ([www.oaic.gov.au](http://www.oaic.gov.au)), by email at [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au), or by post at:

Office of the Australian Information Commissioner  
GPO Box 2999  
Canberra ACT 2601

If you are objecting to a decision to refuse access to documents you must apply to the Information Commissioner within 60 days of being given notice of the decision. You can contact the Information Commissioner by phone on 1300 363 992.

### **Right to complain**

You may make a complaint to the Information Commissioner about action taken by the ACIC in relation to your application. The complaint needs to be in writing and identify the agency against which the complaint is made.

The Information Commissioner 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.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Shelby', written over a light blue horizontal line.

Shelby Simadas  
FOI Coordinator

**Annexure A - Schedule of documents – Freedom of Information Request no. [16-31]**

Document no.	Date	Size	Description	Decision on access	Exemption
1	30/06/2016	2 pages	Freedom of Information Delegation Instrument	Released with deletions on the basis of one or more specific exemptions.	s 47F

## Annexure B – Extracts of the FOI Act

### 47F Public interest conditional exemptions—personal privacy

#### *General rule*

- (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).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
  - (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 document;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

#### *Access given to qualified person instead*

- (4) Subsection (5) applies if:
  - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
  - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
  - (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
  - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

- (7) In this section:

**qualified person** means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;

- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).