

Our reference: 16/206681



**AUSTRALIAN  
CRIMINAL  
INTELLIGENCE  
COMMISSION**

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22 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 – Internal Review**

I refer to your request for access to documents relating to the FOI delegations of the ACIC under the *Freedom of Information Act 1982* (the FOI Act).

### **Background to the Decision**

On Wednesday 2 November 2016 you made a freedom of information request to the ACIC for:

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

On Friday 2 December 2016, Ms Shelby Simadas, FOI Coordinator, responded to your request advising that one document had been found to be within scope of your request and providing you access to a partially redacted version of the document.

By email received on 2 December 2016, you requested an internal review of the original decision in the following terms:

*I am writing to request an internal review of Australian Crime Commission's handling of my FOI request 'FOI Delegations - 2016'.*

*I don't believe that special circumstances apply just because you work for ACIC. The employees mentioned are legal officers, and as such wouldn't be responsible for front line crime fighting operations? If you are able to be listed, why can't they?*

Pursuant to section 54C(2) of the FOI Act the ACIC arranged for me to review the original decision. I am authorised to make a decision concerning the document you requested access to.

### **Material reviewed**

In reaching my decision I considered:

- the relevant provisions of the FOI Act;
- the contents of the relevant documents;

- consultation with relevant ACIC officers;
- the original decision;
- 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

Upon review, I decide that the document is partially exempt from release on the basis of section 47F of the FOI Act to the same extent as decided by the original decision maker. An extract of the relevant exemption provision is at **Annexure B**.

I discuss below the application of the relevant provision to my decision.

### ***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...' The document falling within your request includes the personal information of ACIC officers and other persons.

The OAIC Guidelines at [6.131] also state that further 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 also 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**.

It is my view that, due to the nature of work undertaken at the ACIC, special circumstances exist which make disclosure of the personal information in the document unreasonable. The role the ACIC plays in disrupting serious and organised crime means that the publication of names of employees places those employees at considerable risk to their personal safety.

I note that the individuals in the document:

- are not publicly known to be employed by the ACIC;
- are directly involved in the sensitive work undertaken by the ACIC; and
- have expressed objection to the release of their personal information under FOI.

I also note, in relation to the personal information in the document, that some individuals listed are no longer working for the ACIC.

I have also 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 document; and
- c) the information is not readily available from publicly accessible sources.

In relation to the release of Ms Simadas' name in the document, I refer to the original decision in which she stated *'I have not removed my own name, as I am known to be associated with freedom of information matters'*

This exemption is also subject to public interest considerations, which I deal with below.

### **Public Interest Considerations**

As the original decision maker observed, 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 exemption 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; and

There are also a number of public interest factors that count against release of this information. 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.

I reviewed the document anew and arrived at the same conclusion as the original decision maker in relation to the question of public interest. I consider that, in the circumstances of the section 47F exemption, the public interest factors against the disclosure of the document outweighs the public interest factors in favour of disclosure.

### **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 review by the Information Commissioner.

### **Information Commissioner review**

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,



Rod Jensen  
FOI Delegate and  
National Manager, Legal Services  
ACIC

**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 – Extract 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).