

Our ref: 2013/170

14 January 2013

Mr Matthew Landauer
Email Address: foi+request-29-4a4bd80@tighttoknow.org.au

Dear Mr Landauer


Freedom of Information request

I refer to your application dated 30 November 2012, under the *Freedom of Information Act 1982* (the Act) seeking the following:

"Request for a copy of the latest document that includes a list of all Australian businesses whose computer systems are known to have been compromised in the \$30m Romanian credit card fraud as recently reported in the media."

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.

Yours sincerely,



Superintendent Allan Spencer
Coordinator
Information Access (Freedom of Information)
Government Relations

A

STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY Mr MATTHEW LANDAUER

I, Allan Spencer, Coordinator, Freedom of Information Team, 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 30 November 2012, this office received your application in which you requested:

"Request for a copy of the latest document that includes a list of all Australian businesses whose computer systems are known to have been compromised in the \$30m Romanian credit card fraud as recently reported in the media."

On 20 December 2012, we requested for an extension of time (30 days till 28 01 2013) pursuant to section 15AA of the Act. However, you granted us an extension for 15 days (till 13 January 2013)

SEARCHES

In relation to this request, the following searches for documents have been undertaken:

- a) a search of all records held by AFP case officers with responsibility for matters relating to the documents to which you sought access including, but not limited to Romanian credit card fraud ;and
- b) a search of all records held by the relevant line areas within the AFP.

DECISION

I have identified one document (Excel Book consisting of 5 Excel Sheets) relevant to your request. A schedule of each Excel and details of my decision in relation to each document is at Annexure B.

I have decided that the document that relate to your request is exempt in full, pursuant to subsections s33(b), s37(1)(a), s37(2)(a),s47E(d) and 47G(b) of the Act.

My reasons for this decision are set out below.

REASONS FOR DECISION

I find that the document relevant to your request is exempt under the provisions of the Act, as set out in the Schedule, for the reasons outlined below.

Folios to which subsection 33(b) apply:

Subsection 33(b) of the Act provides that:

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

...

- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information provided by a foreign government on an understanding of confidentiality and on the condition that they are not to be released outside of the AFP. The information was provided on a confidential basis for investigative purposes only and disclosure would be a breach of that confidence and could potentially harm the future supply of information to the AFP. I am satisfied that to grant access to the documents would divulge information communicated in confidence to the AFP by a foreign government.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 33(b) of the Act.

Folios to which subsection 37(1)(a) apply:

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;"*

The documents or parts of documents identified in the schedule as exempt under this section of the Act contain information which if disclosed would or could reasonably be expected to prejudice the conduct of a current investigation. I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 37(1)(a) of the Act.

Folios to which subsection 37(2)(a) apply:

Subsection 37(2)(a) 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:
- (a) prejudice the fair trial of a person or the impartial adjudication of a particular case."

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information concerning an ongoing investigation. The release of the information prior to the case being finalised may prejudice the fair trial of the individuals identified in the case once court proceedings have commenced.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 37(2)(a) of the Act as the matter is still before the courts.

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 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 in ensuring public safety, as it reveals how information is obtained and actioned for the purposes of protecting the public.

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), (e) and (f) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure continued cooperation during police investigations and the effectiveness and integrity of current procedures. I find that release of the documents would be an unreasonable disclosure under subsection 47E(d) of the Act.

Folios to which section 47G apply:

Section 47G of the Act provides that:

- " (1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
- (b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information which relates to the business affairs of a private organisation. The information was obtained by the AFP directly from the private organisation during the course of an investigation on a confidential basis for investigative purposes only. It is considered that this private organisation would be unreasonably affected by the disclosure of the information as it directly relates to their business and commercial affairs. It is also considered that the AFP would be unreasonably affected by the disclosure of the information as it would jeopardise the future supply of information from that private organisation.

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) disclosure would adversely affect the commercial value of the private organisation as it would reveal the methods in which they manage their business, commercial affairs and private clientele. These processes may be private to them and disclosure would be unreasonable;
- (d) disclosure would prejudice the expectation of confidentiality of the information, in particular the commercial value of the private organisation and the personal information of its clientele. The confidentiality would be an inherent expectation of the organisation's clientele and any breach of which could adversely affect the organisation by exposing it to civil claims and liability.
- (e) disclosure would also adversely affect the future commercial earnings of the private organisation if information obtained confidentially was disclosed. Such disclosure could inhibit the organisation's future ability to acquire and maintain a clientele base.
- (f) disclosure would prejudice the future supply of information to the AFP for the purposes of the administration of a law and in particular for the purposes of an investigation. Disclosure of the information would compromise the relationship between the AFP and that private organisation which in turn would prejudice the AFP's ability to effectively carry out its operations as a policing agency.
- (g) disclosure would also deter the private organisation from assisting the AFP in any future investigations as the expectation of providing that information confidentially would be compromised.

I have considered the public interest factors both in favour and against disclosure and in my view, in relation to these documents, the factors at (c) to (g) against disclosure outweigh the factors in favour of disclosure. I find that release of the documents or parts of the documents would be an unreasonable disclosure under section 47G(b) 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*;
- ❖ Guidelines issued by the Department of Prime Minister and Cabinet; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

REVIEW RIGHTS

If you are dissatisfied with this decision you can apply for internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking IC review.

Internal Review by the AFP

Section 53A of the Act gives you the right to apply for an internal review in writing to this Department within 30 days of being notified of this decision.

No particular form is required but it would assist the decision-maker were you to set out in the application, the grounds on which you consider that the decision should be reviewed.

Applications for a review of the decision should be addressed to:

Government Relations
Information Access Team
Australian Federal Police
GPO Box 401
Canberra ACT 2601

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 with this Agency. 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.

Applications for a review of the decision should be addressed to:

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

Right to Complain

Section 70 of the Act provides that a person may complain to the IC about action taken by this Department 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 2013/170
RELEASE OF DOCUMENTS – Mr Matthew Landauer

Document No	Folio No	Date	Author/Addressee	Description	Exemption/Public Interest Claimed	Reason
1	Work Sheet 1	-	Australian Federal Police (AFP)	Excel Book 1 Excel Sheet 1	Exempted in full: s33(b), s37(1)(a), s37(2)(a), s47E(d) & 47G(b) Folio/sheet: 1	s33(b) Deletions are made on the grounds that disclosure would Divulge information communicated in confidence by the authority of a foreign government. s37(1)(a) Provision of this document would disclose matter that would reasonably be expected to prejudice the conduct of an investigation of a breach, or possible breach, of the law, or prejudice the enforcement or proper administration of the law in a particular instance. s37(2)(a) Deletions are made on the grounds that disclosure could prejudice the fair trial of a person or the impartial adjudication

					of a particular case. 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.
2	Work Sheet 2	-	AFP	Excel Book 1 Excel Sheet 2	Exempted in full : S 22(1)(a)(II) Folio/sheet::2
3	Work Sheet 3	-	AFP	Excel Book 1 Excel Sheet 3	Exempted in full: S 22(1)(a)(II) Folio/sheet::3

s47G(b) Deletions are made on the grounds that disclosure would prejudice the future supply of information to the AFP for the purpose of administration of the law. Access must be given unless it would be contrary to the public interest.

s22(1)(a)(ii) Exempted material would disclose information that would reasonably be regarded as irrelevant to the request.

Same as above

4	Work Sheet 4	-	AFP	Excel Book 1	Exempted in full: S 22(1)(a)(II) Folio:4	Same as above
5	Work Sheet 5	-	AFP	Excel Book 1 Excel Sheet 5	Exempted in full: S 22(1)(a)(II) Folio:4	Same as above

Authorised Decision Maker: Superintendent Allan Spencer
Coordinator
Information Access (Freedom of Information)
Government Relations
Australian Federal Police

Date of Decision: 14 January 2012