

Our ref: 2013/110

20 December 2012

Ms Evelyn Doyle

Email Address: foi+request-3-cc1d51f5@righttoknow.org.au

Dear Ms Doyle

Freedom of Information request

I refer to your application dated 16 October 2012 (which was subsequently revised as per your email dated 7 November 2012) under the *Freedom of Information Act 1982* (the Act) seeking the following:

- "1. Ministerial Briefs and talking points for the Minister for Home Affairs, the Hon Brendan O'Connor MP for the period April 2012 - November 2012 relating to claims made by former AFP Agent, Mr Ross Fusca alleging the offering of inducements to shut down the AWB investigation prematurely.*
- 2. Any ministerials written/signed by Mr O'Connor to the Attorney-General on this matter during the same timeframe.*
- 3. A copy of the advice from barrister Peter Hastings QC suggesting it was not in the public interest to continue the investigation."*

You further modified your request to reflect the fact the Hon Jason Clare MP was Minister for Home Affairs and Justice for the period April 2012-November 2012 in your application.

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,



Peter Whowell
Manager
Government Relations
Policy & Governance

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
Ms EVELYN DOYLE**

I, Peter Whowell, Manager Government Relations, Policy & Governance, 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 16 November 2012, this office received your original application.

On 31 October 2012 you were advised about our intention to refuse your request in accordance with section 24AB of the FOI Act due to its broad nature which would substantially and unreasonably divert the resources of AFP from its other operations.

On 7 November 2012 you considered our communication dated 31 October 2012 and revised your request accordingly in the following terms:

- "1. Ministerial Briefs and talking points for the Minister for Home Affairs, the Hon Brendan O'Connor MP for the period April 2012 - November 2012 relating to claims made by former AFP Agent, Mr Ross Fusca alleging the offering of inducements to shut down the AWB investigation prematurely.*
- 2. Any ministerials written/signed by Mr O'Connor to the Attorney-General on this matter during the same timeframe.*
- 3. A copy of the advice from barrister Peter Hastings QC suggesting it was not in the public interest to continue the investigation."*

You further modified your request to reflect the fact the Hon Jason Clare MP was Minister for Home Affairs and Justice for the period April 2012-November 2012 in your application.

On 13 November 2012, you agreed to an extension of time pursuant to section 15AA of the Act.

SEARCHES

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

- a) a "text" search of the AFP's investigation case management system PROMIS for records relating to "Australian Wheat Board Inquiry";
- b) a "manage records" search of the AFP's investigation case management system PROMIS for records relating to "Australian Wheat Board Inquiry and former AFP Federal Agent Ross Fusca";

- c) 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 Australian Wheat Board Inquiry and former Federal Agent Ross Fusca;
- d) a search of the records management system;
- e) a search of ministerial correspondence system; and
- f) a search of all records held by the relevant line areas within the AFP.

DECISION

In relation to Point 1 of your request I have identified two documents. In relation Point 3 of your request I have identified one document. A schedule of each document and details of my decision in relation to each document is at Annexure B.

I have decided that two of the documents itemised at Annexure B that relate to your request are released with deletions pursuant to subsections 22(1)(a)(ii) and 47F of the Act. One of the documents relevant to your request is exempt in full pursuant to subsection 42(1) of the Act.

My reasons for this decision are set out below.

REASONS FOR DECISION

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

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 parts of the 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, the exempt information refers to other issues which are not mentioned in your FOI application.

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

Folios to which subsection 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 parts of the 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.

I find that the release of these parts of the documents would be an unreasonable disclosure of personal information and they are therefore exempt under section 47F of the Act.

Folios to which subsection 42(1) apply:

Subsection 42(1) of the Act provides that:

"(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege."

The document identified in the Schedule as exempt under this section of the Act contains information brought into existence for the purpose of obtaining legal advice and for use in litigation. I am satisfied that this document would be privileged from production in legal proceedings on the grounds of legal professional privilege. The AFP has not waived its right to hold privilege over these folios.

I find that release of the document would be an unreasonable disclosure under subsection 42(1) of the Act.

In relation to Point 2 of your request, the Australian Federal Police holds no documents. On this basis, Part 2 your request for access is refused under section 24A(1)(a)(b) of the Act.

Section 24A (1) (a)(b) states:

"An agency or Minister may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document; and
- (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist. "

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 2013/110
RELEASE OF DOCUMENTS – Ms Evelyn Doyle

Document No	Folio No	Date	Author/Addressee	Description	Exemption/Public Interest Claimed	Reason
1	1-2	26 06 2012	Australian Federal Police (AFP)	Ministerial Brief AFP Ref: 3582644	Released with deletions: Folios: 1-2 s22(1)(a)(ii) & s47F	s22(1)(a)(ii) Exempted material would disclose information that would reasonably be regarded as irrelevant to the request. s47F Deletions are made on the grounds that disclosure would involve the unreasonable provision of personal details of people other than the FOI applicant.
2	3-4	15 06 2012	AFP	Question Time Brief(QTB)	Released with deletions: Folios: 3-4 s22(1)(a)(ii), s47F & s47E(d)	Same as above and 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.
3	5-43	18 08 2009	Barrister Peter Hastings QC	Report	Exempted in full	s42 (1) Material is considered exempt on the grounds that it is of such a nature that it would be privileged

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							from production in legal proceedings on the ground of legal professional privilege.
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Authorised Decision Maker: Peter Whowell
Manager
Government Relations
Australian Federal Police

Date of Decision: December 2012

IN-CONFIDENCE



MINISTERIAL BRIEF

Sub Number

AFP Ref: 3582644

Minister for Home Affairs and Justice

cc

Attorney-General

OPERATION MORVEN – MULTI AGENCY TASK FORCE INTO THE UN OIL-FOR-FOOD PROGRAM

Deadline: Routine.

Purpose: For information.

Information:

In 2006 The Oil for Food taskforce was established after the Cole Inquiry recommended a criminal investigation into allegations that the AWB and several senior company figures had likely broken Australian laws when they paid hundreds of millions of dollars in alleged kickbacks disguised as transport fees to the regime of Saddam Hussein.

2. In March 2007 the Task Force, led by the Australian Federal Police (AFP), and comprising of 28 members from the AFP, the Australian Securities and Investments Commission (ASIC) and the Victoria Police (Vic Pol), was established to investigate the matter. The Government allocated \$20.3 million over three years for the taskforce.
3. The Task Force was oversighted by a Senior Coordination Group chaired by the Secretary of the Attorney-General's Department (AGD). The Senior Coordination Group was comprised of the AFP, ASIC, Victoria Police, the Commonwealth Department of Public Prosecution, the Department of the Prime Minister and Cabinet, the Department of Finance and Deregulation and the AGD.
4. In July 2007 the Task force agreed to prioritise civil action due to the time limits that apply to civil penalty proceedings. As a result ASIC commenced a separate investigation into potential breaches of the Corporations Act.
5. In July 2009 the AFP Commissioner sought a review of the criminal investigation from Peter Hastings QC, specifically to review the material gathered to date.
6. On 26 August 2009, taking into consideration the advice provided by Mr Hastings, the Commissioner determined that the AFP Task Force investigation would be discontinued and all material collected by the AFP was made available to ASIC to assist that agency with its investigation of potential breaches of the Corporations Act.

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

DOCUMENT HAS BEEN RELEASED
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THE AUSTRALIAN FEDERAL POLICE

FOI - 1

22(1)(a)(ii), s47F

22(1)(a)(ii), s47F

22(1)(a)(ii), s47F

10. In April 2012, Mr Fusca submitted a statement of claim to the Federal Court claiming that the AFP took adverse action against him because he exercised his workplace rights. The AFP filed its defence to the statement of claim on 1 June 2012 denying Mr Fusca's claims.

11. In the Statement of Claim and in recent media reports, Mr Fusca claims that he was offered a 'promotion' by a senior AFP member if he could make the taskforce 'go away'. This allegation had not previously been made to the AFP by Mr Fusca. A decision was made not to progress this as a complaint and allow the Federal Court to test the matters raised as allowed for under Part V of the *AFP Act 1979*. ACLEI has been advised of this matter but the AFP has not formally notified the Integrity Commissioner as, due to the circumstances, it is not considered a corruption issue.

Consultation: Nil.

Future Action: Nil

Expected Reaction: Possible ongoing media coverage of Mr Fusca's claims.

Recommendation: That you note the contents of this brief.

s47F

Noted

Andrew Colvin
Deputy Commissioner
Operations

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Minister for Home Affairs and Justice

26 June 2012

Action Officer: Linda Champion

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

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UNDER THE FOI ACT BY
THE AUSTRALIAN FEDERAL POLICE

FOI - 2

QTB – ALLEGATIONS MADE BY FORMER AFP EMPLOYEE ROSS FUSCHA

Current Issue:

- On 07 June 2012 media reporting (Sydney Morning Herald) detailed allegations made by former AFP member Ross Fuscha, that he was allegedly offered a promotion to shut down the AFP's investigation into the AWB foreign bribery scandal.

Brief talking points:

- I am aware of recent media reports claiming that Mr Fuscha was offered a promotion to shut down the AFP's investigation of the AWB bribery investigation.
 - The AFP refutes the allegations made by Mr Fuscha.
 - In March 2007, a Taskforce was established comprising 28 members from the AFP, the Australian Securities and Investments Commission (ASIC) and the Victoria Police (Vic Pol), to consider possible prosecution action and to prepare, where appropriate, briefs of evidence.
- 22(1)(a)(ii)
- The Task Force was oversighted by a Senior Coordination Group chaired by the Secretary of the Attorney-General's Department (AGD). The Senior Coordination Group was comprised of the AFP, ASIC, Vic Pol, the Commonwealth Department of Public Prosecution, the Department of the Prime Minister and Cabinet, the Department of Finance and Deregulation and the AGD.
 - In July 2009 the AFP Commissioner sought a review from Peter Hastings QC, to review the material gathered to-date and consider the likelihood, or otherwise, of a successful conclusion to the matter, including future avenues of enquiry.
 - On 18 August 2009 Mr Hastings concluded that the cost/benefit analysis, the resources required to mount a prosecution, and the consequential costs, would be disproportionate to the prospects of the prosecution succeeding. Mr Hastings further concluded that the public interest did not require the institution of prosecution proceedings.

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

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THE AUSTRALIAN FEDERAL POLICE

Index No XX

(This document may have been modified within the Ministerial Office)

Key Facts:

- On 25 August 2009 the AFP Commissioner determined that the AFP Task Force investigation would be discontinued and all material collected by the AFP was made available to ASIC to assist that agency with its investigation.

Complaints made by Mr Fuscha against the AFP

22(1)(a)(ii), s47F

- In April 2012, Mr Fusca submitted a statement of claim to the Federal Court claiming that the AFP took adverse action against him because he exercised his workplace rights. The AFP filed its defence to the statement of claim on 1 June 2012 denying Mr Fusca's claims.

Contact Officer: Clearance Officer for Departmental Input: Ramzi Jabbour.	Phone: s47E(d) Phone: s47E(d)	Branch: Corporate Reporting Division: Crime Program	Date Created: 15 June 2012 Updated on: 15 June 2012 Last Reviewed: 15 June 2012	MOB reference: <xxxx>
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