

Our ref: CRM 2017/396

3 April 2017

Mark R. Diamond
By email: foi+request-3188-ba783daf@righttoknow.org.au

Dear Mr Diamond

Freedom of Information Request

I refer to your application 4 March 2017 made to the Australian Federal Police, in which you sought access to documents in respect to emails published on WikiLeaks, under the *Freedom of Information Act 1982* (the Act).

The Commissioner of the Australian Federal Police, being the principal officer of that Agency, has authorised me to make decisions on behalf of that agency in respect of the Act.

DECISION

Pursuant to section 25 of the Act, this agency neither confirms nor denies the existence of documents in relation to your request in that in the event such documents did exist, they would be exempt documents under section 37(1) of the Act.

Section 37(1) provides that:

A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- ...
- (b) *disclose, or enable a person to ascertain, the existence of or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law...*

In *The Sun-Herald Newspaper and the Australian Federal Police [2014] AICmr 52*, the Privacy Commissioner considered the operation of section 25 with respect to paid informants. The Commissioner, in considering the application of section 37(1), noted that the mere confirmation of an absence of a confidential informant was determinative and, while there was press speculation as to the existence of paid informants in the circumstances outlined in the request, the AFP had never publically acknowledged their existence.

In relation to your request, I find that it is reasonable to expect that an individual would be able to determine that the existence of the notional document requires that there must have been a confidential source or, conversely, the absence of documents requires that no such source existed. As such, this notional document would be an exempt document under section 37(1) of the Act.

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:

Freedom of Information Team
Australian Federal Police
GPO Box 401
Canberra ACT 2601

Internal 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 5218
Sydney NSW 2001

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 investigation.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Ellery', written in a cursive style.

Jacqueline Ellery
Acting Coordinator
Freedom of Information
Australian Federal Police