



AFP

AUSTRALIAN FEDERAL POLICE

FREEDOM OF INFORMATION

GPO Box 401 Canberra City ACT 2601

Telephone 02 6131 6131

Email foi@afp.gov.au

www.afp.gov.au

ABN 17 884 931 143

Our ref: CRM 2017/445

26 April 2017

Mr Ben Fairless

By email: foi+request-3316-d9225c16@righttoknow.org.au

Dear Mr Fairless,

Freedom of Information request

I refer to your email dated 28 March 2017 under the *Freedom of Information Act 1982* (the Act) seeking the following:

"Can you let me know if you have any guidelines which detail what non-personal information can be provided without a formal FOI request (This is sometimes referred to as "Administrative Access Arrangements")?

Please consider this request informally if possible, otherwise consider it a formal FOI request if possible."

Attached at Annexure A to this letter is my decision and statement of reasons for that decision.

Yours sincerely,

Nathan Scudder
Coordinator
Freedom of Information
Australian Federal Police

STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY BEN FAIRLESS

I, Nathan Scudder, Coordinator, Freedom of Information, 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 28 March 2017, this office received your email in which you requested:

"Can you let me know if you have any guidelines which detail what non-personal information can be provided without a formal FOI request (This is sometimes referred to as "Administrative Access Arrangements")?"

Please consider this request informally if possible, otherwise consider it a formal FOI request if possible."

SEARCHES

In relation to this request, a search for all records held by the relevant line areas within the AFP, including, but not limited to, People Safety and Security, Technology and Innovation, Governance and Media teams.

DECISION

I have identified one document relevant to your request.

I have decided that some of the document is exempt in full pursuant to section 47C of the Act.

My reasons for this decision are set out below.

WAIVER OF CHARGES

Further, given that the request has totalled only 15 pages and was not a complex request to process, I am waiving any further fees and charges which are normally associated with the processing of applications under the Act.

REASONS FOR DECISION

Folios to which section 47C apply:

Section 47C of the Act provides that:

*"(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or*

recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth."

The document or parts of the document identified as exempt under this section of the Act contain information, the release of which, is exempt on the grounds that it is an internal working document of the AFP. Provision of these folios would disclose matter in the nature of current consultation and deliberation that is being undertaken for the purposes of the deliberative processes involving the operational functions of the Australian Federal Police.

There is also public interest in protecting the integrity of the decision-making process by separating the final decision-making policy or policy making steps and the reasons therefore from the opinions and advice of the officials who contributed to the consideration.

Subsection 47C(2) provides that:

- "...
- (2) *Deliberative matters does not include either of the following:*
- (a) *operational information (see section 8A);*
 - (b) *purely factual material.*

As the opinion in this information involved analysis of the facts of the review to form a judgement, I am satisfied that this information is not purely factual material and therefore is not excluded under subsection 47C(2) of the Act.

I have considered the public interest factors both in favour and against disclosure of the information in these folios to determine whether disclosure would be contrary to the public interest.

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) if such information was disclosed, it would restrict the ability of AFP employees in future to record their opinions directly, freely and confidentially during an investigation process;
- (d) disclosure would prejudice the agency's ability to form an analysis and present its recommendations in relation to AFP operations; and
- (e) that if information concerning the documents was revealed, it may compromise the AFP's operations and damage relations with external stakeholders.

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),

(d) and (e) against disclosure outweigh the factors in favour of disclosure. I find that release of the document or parts of the document would be an unreasonable disclosure under section 47C 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*;
- ❖ Guidance material issued by the Department of Prime Minister and Cabinet; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

**** YOU SHOULD READ THIS GENERAL ADVICE IN CONJUNCTION WITH THE LEGISLATIVE REQUIREMENTS OF THE FREEDOM OF INFORMATION ACT 1982.**

REVIEW AND COMPLAINT RIGHTS

If you are dissatisfied with a Freedom of Information decision made by the Australian Federal Police, you can apply for an internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking an IC review.

You do not need to seek a review by either the AFP or the IC should you wish to complain about the AFP's actions in processing your request.

REVIEW RIGHTS under Part VI of the Act

Internal Review by the AFP

Section 53A of the Act gives you the right to apply for an internal review in writing to the Australian Federal Police (AFP) within 30 days of being notified of a decision. No particular form is required. It would assist the independent AFP decision-maker responsible for the internal review if you set out in the application, the grounds on which you consider that the decision should be reviewed.

Section 54B of the Act provides that the internal review submission must be made within 30 days. Applications for a review of the decision should be addressed to:

Freedom of Information

Australian Federal Police
GPO Box 401
Canberra ACT 2601

REVIEW RIGHTS under Part VII of the Act

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 by the AFP. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision. It would also help if you set out the reasons for review in your application.

Section 54S of the Act provides for the timeframes for an IC review submission. For an *access refusal decision* covered by subsection 54L(2), the application must be made within 60 days. For an *access grant decision* covered by subsection 54M(2), the application must be made within 30 days.

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

Office of the Australian Information Commissioner
GPO Box 5128
Sydney NSW 2001.

Further, the OAIC encourages parties to an IC review to resolve their dispute informally, and encourages agencies to consider possible compromises or alternative solutions to the dispute in this matter. The AFP would be pleased to assist you in this regard.

Information about the IC review process can be found in Part 10 of the Guidelines which are available on our website at <http://www.oaic.gov.au/publications/guidelines.html>.

RIGHT TO COMPLAIN under Part VIIB of the Act

Section 70 of the Act provides that a person may complain to the IC about action taken by the Australian Federal Police 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.