



**Australian Government**  
**Attorney-General's Department**

13/14717

24 September 2013

By email only: [foi+request-371-3e272da2@righttoknow.org.au](mailto:foi+request-371-3e272da2@righttoknow.org.au)

Dear Mr King,

**Freedom of Information Request no. FOI13/140**

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

**Summary**

I, Catherine Smith, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

You requested access to the:

*"General Register of Warrants maintained by the Attorney-General's Department under subsection 81A(2) of the Telecommunications (Interception and Access) Act 1979."*

On 4 September 2013 the Department acknowledged your request as a valid request under s 15 of the FOI Act.

I identified one document that fell within the scope of your request, namely the General Register of Warrants. I did this by conducting a search of electronic records of the Department and hardcopy files of the relevant area of the Department, specifically the Telecommunications and Surveillance Law Branch, and making inquiries with staff who would be likely to be able to assist in locating the documents.

With regard to the document you requested, I have decided to refuse access in full. More information, including my reasons for my decision, is set out below.

**Decision and reasons for decision**

With regard to the document requested in your application, I have decided:

- **to refuse access** under section 38 of the FOI Act – *Documents to which secrecy provisions of enactments apply*, section 37 of the FOI Act – *Documents affecting enforcement of law and protection of public safety*, section 47F of the FOI Act – *Public interest conditional exemption – personal privacy* and section 47B of the FOI Act – *Public interest conditional exemption – Commonwealth-State relations etc.*

**Material taken into account**

I have taken the following material into account in making my decision:

- The document which fell within the ambit of your request,
- The FOI Act (specifically, sections 38, 37, 47F and 47B), and

- The Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

My reasons for refusing access are given below.

### **1. Exemption – Documents to which secrecy provisions of enactments apply**

Under section 38 of the FOI Act provides:

- (1) Subject to subsection (1A), a document is an exempt document if:*
- (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and*
  - (b) either:*
    - (i) that provision is specified in Schedule 3; or*
    - (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.*

Section 63 of the TIA Act is prescribed in Schedule 3 of the FOI Act as a provision to which secrecy obligations apply. Under section 63 of the TIA Act:

- ... (2) Subject to this Part, a person must not, after the commencement of this subsection:*
- (a) communicate interception warrant information to another person; or*
  - (b) make use of interception warrant information; or*
  - (c) make a record of interception warrant information; or*
  - (d) give interception warrant information in evidence in a proceeding.*

The phrase ‘*interception warrant information*’ is defined in section 6EA of the TIA Act as:

- ... (a) information about any of the following:*
- (i) an application for an interception warrant;*
  - (ii) the issue of an interception warrant;*
  - (iii) the existence or non existence of an interception warrant;*
  - (iv) the expiry of an interception warrant; or*
  - (b) any other information that is likely to enable the identification of:*
    - (i) the telecommunications service to which an interception warrant relates; or*
    - (ii) a person specified in an interception warrant as a person using or likely to use the telecommunications service to which the warrant relates.*

I consider that the information required to be kept in the General Register of Warrants under section 81A of the TIA Act is analogous to the definition of ‘*interception warrant information*’ under section 6EA of that Act.

As the General Register of Warrants contains information of which disclosure is prohibited by the provision of section 63 of the TIA Act, and that provision is specified in Schedule 3, I consider that the information contained within the General Register of Warrants means that it is an *exempt document* for the purposes of section 38(1) of the FOI Act.

## **2. Exemption – Documents affecting enforcement of law and protection of public safety**

Section 37(1)(a) of the FOI Act provides:

*(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;*

Part 5.74 of the Australian Information Commissioner Guidelines explain that for a document to be exempt under section 37(1)(a) of the FOI Act, the material in question should have a connection with the criminal law and will be exempt if its disclosure would or could reasonably be expected to have the consequence of prejudicing the conduct of an investigation of a breach, or possible breach, of the law.

In applying this exemption, I have examined the circumstances surrounding the creation of the General Register of Warrants held by this Department, along with the possible consequences of their release under FOI. The General Register of Warrants contains information relevant to ongoing and completed law enforcement investigations and I am, therefore, satisfied that there is a reasonable expectation that the release of the General Register of Warrants could prejudice the conduct of a current criminal investigation. For operational reasons it would be inappropriate for the Australian Government to release, under the FOI Act, the General Register of Warrants. Accordingly, I am satisfied that the elements of section 37(1)(a) of the FOI Act are met and that the General Register of Warrants is exempt in full.

## **3. Public interest conditional exemption – personal privacy**

Under section 47F(1) of the FOI Act:

*(1) a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person)*

Personal information is defined in section 4 of the FOI Act to mean:

*Information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

The General Register of Warrants contains personal information, including individual names of persons and the Judge or Administrative Appeals Tribunal Member who issued the warrant. In my view, releasing this material would involve the unreasonable disclosure of individuals' personal information. Accordingly, I have decided that this information is conditionally exempt under section 47F(1) of the FOI Act.

Under Section 11A(5) of the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. Using Part 6 the Australian Information Commissioner's Guidelines, I have identified the following factors as relevant in determining whether the disclosure of this information would cause specific harm, in this case, the unreasonable disclosure of individuals' personal information. I consider that disclosure would promote the objects of the FOI Act by providing the Australian community with access to

information held by the Commonwealth Government. Conversely, I consider that disclosure could reasonably be expected to prejudice the protection of individuals' right to privacy. Given the severity of the offences being investigated under telecommunications interception, disclosure of the names of individuals and names of the Judge or Administrative Appeals Tribunal Member who issued the specific warrants has the capacity to cause real harm. In my view, the importance of maintaining individuals' right to privacy outweighs the factors in favour of disclosure. In accordance with section 11B(4) of the FOI Act, I have not taken any irrelevant factors into account.

Accordingly, I am satisfied that the General Register of Warrants is conditionally exempt under section 47F(1) of the FOI Act and that disclosure would be contrary to the public interest.

#### **4. Public interest conditional exemption – Commonwealth-State relations etc.**

Section 47B of the FOI Act provides the following:

*A document is conditionally exempt if disclosure of the document under this Act:*

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or*
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, 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 General Register of Warrants contains information about a significant number of telecommunications interception warrants relating to investigations by law enforcement agencies of the Australian States. As disclosure of these investigations would reveal the nature and extent of these investigations, I consider that such disclosure could reasonably be expected to cause damage to relations between the Commonwealth and the States. Accordingly, I am satisfied that the General Register is conditionally exempt from disclosure under section 47B of the Act.

Under Section 11A(5) of the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. Using Part 6 the Australian Information Commissioner's Guidelines, I have identified the following factors as relevant in determining whether the disclosure of this information would cause specific harm, in this case, damage to Commonwealth – State relations. I consider that disclosure would promote the objects of the FOI Act by providing the Australia community with access to information held by the Commonwealth Government. Conversely, I consider that disclosure could reasonably be expected to prejudice security and law enforcement and the Department's future ability to work cooperatively with States and Territories. In accordance with section 11B(4) of the FOI Act, I have not taken any irrelevant factors into account. In my view, the factors against disclosure of the material outweigh the factors in favour of disclosure.

Accordingly, I am satisfied that the General Register is conditionally exempt from disclosure under section 47B of the Act and that disclosure would be contrary to the public interest.

#### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

**Internal review**

Under section 54 of the FOI Act, you may apply in writing to the Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

online:     foi@ag.gov.au  
post:       FOI and Privacy Section  
             Office of Corporate Counsel,  
             Attorney-General's Department,  
             3-5 National Circuit  
             Barton, ACT 2600

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

**Information Commissioner review**

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

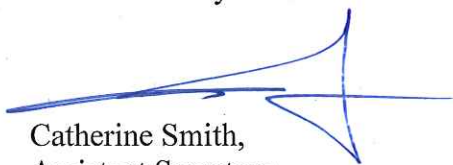
online:       <https://forms.business.gov.au/aba/oaic/foi-review-/>  
email:        enquiries@oaic.gov.au  
post:         GPO Box 2999, Canberra ACT 2601  
in person:    Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

**Questions about this decision**

If you wish to discuss this decision, please contact Elise Perry by email at [foi@ag.gov.au](mailto:foi@ag.gov.au).

Yours sincerely



Catherine Smith,  
Assistant Secretary