



FREEDOM OF INFORMATION

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Our ref: CRM 2018/62

18 August 2017

Mr Phillip Sweeney

Email: foi+request-3740-e6594f88@righttoknow.org.au

Dear Mr Sweeney,

Your Freedom of Information Request - FOI 2018/62


I refer to your email application dated 21 July 2017 seeking access to documents held by the Australian Federal Police (**AFP**) under the *Freedom of Information Act 1982* (**the FOI Act**) to:

"a copy of the letter dated 19 May 2017 and a copy of a letter dated the 30 May 2017 that were referred to in a letter from the AFP dated 20 July 2017 bearing the signature of Peter Crozier, Manager Criminal assets, Fraud & Anti-Corruption, Organised Crime and Cyber".

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,


Thomas McBride
Acting Coordinator
Freedom of Information
Australian Federal Police

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
Mr Phillip Sweeney**

I, Thomas McBride, Acting Coordinator, Freedom of Information, am an officer authorised under section 23 of the *Freedom of Information Act 1982* (**the FOI Act**) to make decisions in relation to documents held by the Australian Federal Police (**AFP**).

What follows is my decision and reasons for the decision in relation to your application.

BACKGROUND

On 21 July 2017, this office received your FOI email application in which you requested:

"a copy of the letter dated 19 May 2017 and a copy of a letter dated the 30 May 2017 that were referred to in a letter from the AFP dated 20 July 2017 bearing the signature of Peter Crozier, Manager Criminal assets, Fraud & Anti-Corruption, Organised Crime and Cyber".

DECISION

I have identified two (2) documents that fall within the terms of your FOI request. A schedule of each document and details of my decision in relation to each document is set out at Annexure B.

I have decided to release to you the two (2) documents.

I have only redacted information within the second document. I am satisfied that the document attract the exemptions in sections 47F(1) of the FOI Act.

As identified in the schedule, I have decided to apply section 22 of the FOI Act to redact exempt or irrelevant material from the documents so that the remaining non-exempt portions of the documents can be released.

My reasons for this decision are set out below.

SEARCHES

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

- a) a search of the records management system;
- b) a search of all AFP file registries; and
- c) a search of all records held by the relevant line areas within the AFP.

REASONS FOR DECISION

Document to which section 47F applies:

Section 47F(1) of the FOI 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).*

Document 2 identified in the schedule as partially exempt under this section of the FOI Act contains 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 document 2 contains personal information.

I have considered the public interest factors both in favour and against disclosure of the information in this document.

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) the current relevance of the information; and
- (d) 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:

- (e) 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;
- (f) the availability of the information from publicly accessible sources;
- (g) prejudice to the protection of an individual's right to privacy.

While there is a public interest in providing access to document held by the AFP, I have given greater weight to factors (e), (f) and (g) above and conclude that on balance, disclosure is not in the public interest.

Because the AFP has not received consent regarding the release of some personal information regarding this request, disclosure of that information would be contrary to an individual's right to the protection of their personal privacy.

I find that the release of this information would be an unreasonable disclosure of personal information as the individuals mentioned are not public figures and the information contained in the documents is not public knowledge.

Accordingly, I find that the release of this part of document 2 would be an unreasonable disclosure of personal information and is therefore exempt under section 47F(1) of the FOI Act.

Document to which section 22 applies:

I have decided to apply section 22 of the FOI Act in some cases where the information does not fall within the scope of the request (ie irrelevant information). In some cases, I have deleted irrelevant information and material subject to exemptions in order to allow for the release of the balance of the document.

Accordingly, I exempt parts of document 2 under section 22(1)(a)(ii) of the FOI 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*; and
- Guidelines issued by the Office of the Australian Information Commissioner (OAIC).



Freedom of information – Your review rights

July 2012

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see FOI fact sheet 13 – *Freedom of information: How to make a complaint*.

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

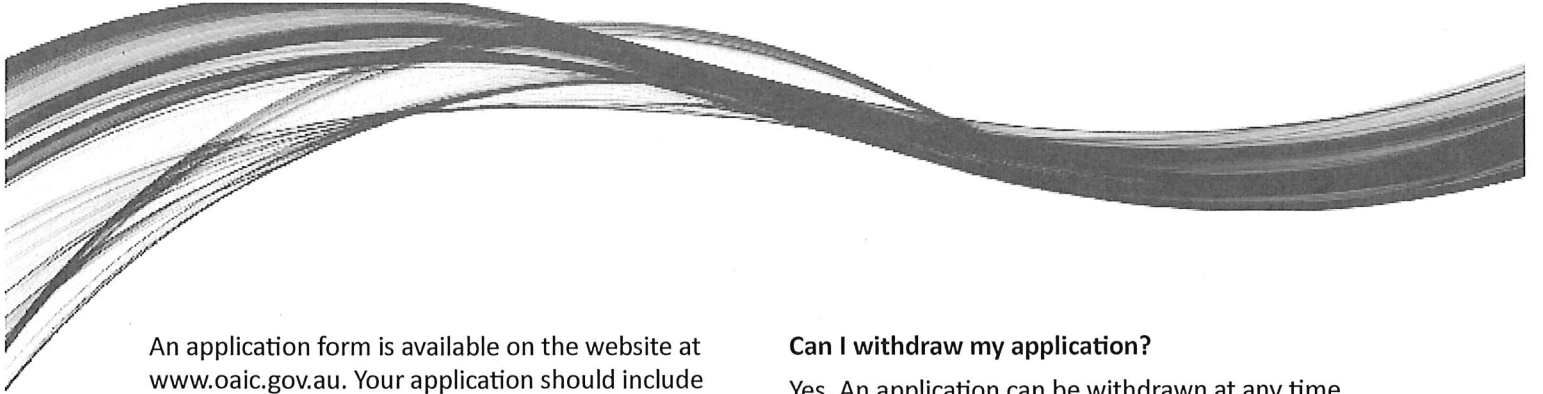
Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

online: www.oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
fax: +61 2 9284 9666
email: enquiries@oaic.gov.au
in person: Level 8, Piccadilly Tower
133 Castlereagh Street
Sydney NSW



An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

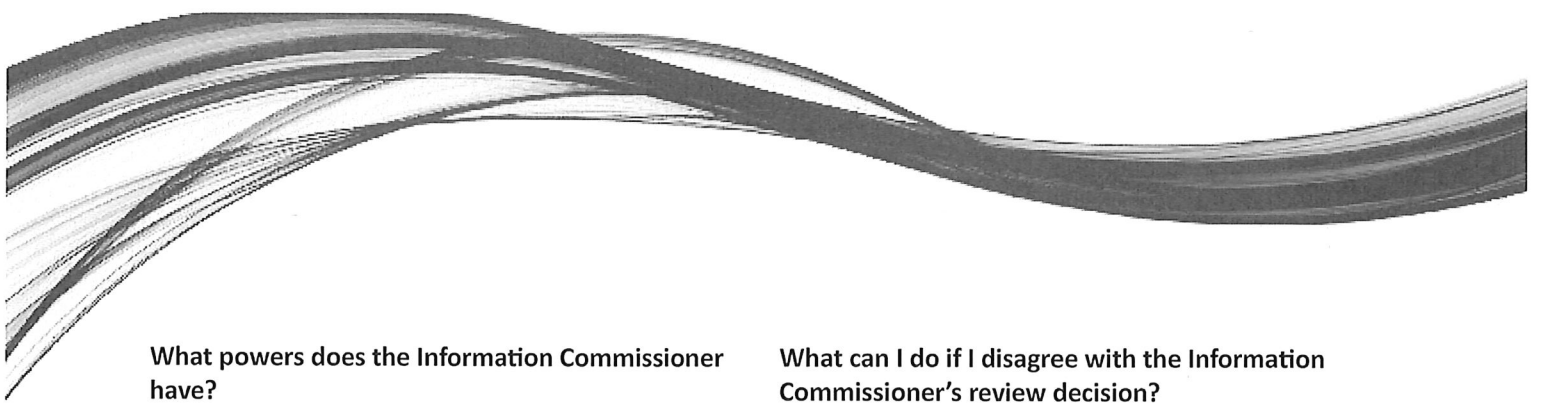
There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.



What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. There is a fee for lodging an AAT application, although there are exemptions for health care and pension concession card holders, and the AAT can waive the fee on financial hardship grounds. For further information see www.aat.gov.au/FormsAndFees/Fees.htm.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: enquiries@oaic.gov.au

write: GPO Box 2999, Canberra ACT 2601
or visit our website at www.oaic.gov.au

Schedule of Documents – FOI Request: CRM 2018/62

Doc No.	Folio No.	Description
1	N/A	N/A
2	5	s.22(1)(a)(ii): Exempted material would disclose information that would reasonably be regarded as irrelevant to the request.
		s.47F: Deletions are made on the grounds that disclosure of information would involve the unreasonable disclosure of personal information about any person.
	7	s.22(1)(a)(ii)
		s.47F

19 May 2017

12 Highland Way

Highton, 3216

Attn: Commissioner Andrew Colvin APM OA

Australian Federal Police

GPO Box 401,

Canberra ACT 2601

commissioner@afp.gov.au

Dear Commissioner

Re: Section 316 Disclosure Obligation

Firstly the **Australian Federal Police** are to be congratulated on their investigation into the Tax Office fraud where charges have also been laid against ATO Deputy Commissioner Michael Cranston.

It would appear from media reports that the Deputy Commissioner was "**running protection**" for someone else and did not himself benefit financially from the fraud. This was an abuse of public office.

The Prime Minister Malcolm Turnbull has made the following statement in response to the disclosure of the fraud:

"Nobody should imagine they can escape our law-enforcement agencies no matter how high they may be in a government department" He said.

"No matter how high they may be, they are being watched. We have zero tolerance for this type of conspiracy, this type of fraud, this type of abuse of public office.

We have a relentless pursuit of corruption, malpractice, abuse of office, the AFP have a very keen focus on it...as has been demonstrated."

Given these statements by the Prime Minister this letter is a foreshadowing letter to advise the Commissioner to expect a disclosure pursuant to **Section 316** of the **Crimes Act 1900** (NSW) {**Appendix A**} from Mrs Helen Rowell the Deputy Chairman of **APRA**.

The head office of **APRA** is in Sydney and Mrs Rowell is subject to the laws of NSW as well as Commonwealth laws.

Mrs Rowell is privy to information concerning the contravention of the following Commonwealth offences under the **Criminal Code Act 1995** (Cth):

- (i) 136.1 False or misleading statements in applications

Appendix A

CRIMES ACT 1900 (NSW) - SECT 316

316 Concealing serious indictable offence

(1) If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.

s22(1)(a)(ii)

Waltmann, Jannelle

From: Davidson, Jerome <Jerome.Davidson@TREASURY.GOV.AU>
Sent: Tuesday, 30 May 2017 10:51 AM
To: Commissioner
Cc: 'olsc@justice.nsw.gov.au'; s22 Schumacher, Ngaire
Subject: Letter from ASIC Enforcement Review Taskforce re Phillip Sweeney
[SEC=UNCLASSIFIED]
Attachments: AColvin300517.pdf
Categories: Printed

Please see letter attached.

Regards

s22 Jerome Davidson

Principal Adviser (a/g)

Financial System Division

The Treasury

Level 5, 100 Market Street

SYDNEY 2000

Tel. +61 2 16263 3968

Jerome.davidson@treasury.gov.au

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thoroughly evaluated by the latter, so that no question of 'concealment' of the alleged offences arises. Mr Sweeney also apparently publishes information relevant to these matters, including correspondence to and from various Government agencies, see:

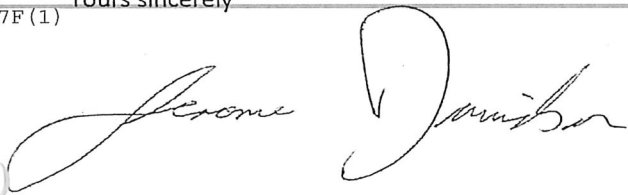
https://www.righttoknow.org.au/user/phillip_sweeney.

- It appears that Mr Sweeney may be seeking to use section 316 of the Crimes Act or similar provisions as a means to compel complaints to authorities by individuals who would not be privy to the relevant information but for him supplying it to them – an odd purpose for which to seek to use such provisions in circumstances where he has disclosed no reason why he cannot make complaints to authorities on his own behalf, and indeed has already done so.
- Treasury notes that Mr Sweeney has made similar assertions regarding disclosure obligations to members of APRA; and that, in the course of pursuing material associated with his allegations of major fraud he has been declared to be a vexatious applicant under section 89K(1) of the *Freedom of Information Act 1982*, on the grounds that his conduct involved an abuse of process because it:
 - involved harassment of at least one ASIC employee; and
 - unreasonably interfered with the operations of ASIC and APRA.¹

Given the above, the Taskforce and its members do not intend to make any of the 'disclosures' or take any other action sought by Mr Sweeney in relation to these matters, or to engage in further correspondence with him on this subject. Nevertheless, should you wish to examine the information provided by Mr Sweeney, the Taskforce will be happy to supply it.

Yours sincerely

s47F(1)



s Jerome Davidson

Acting Chair – ASIC Enforcement Review Taskforce

¹ Sweeney and Australian Information Commissioner and Australian Securities and Investments Commission
Sweeney and Australian Information Commissioner and Australian Prudential Regulation Authority
[2014] AATA 531; 4 August 2014; [2014] AATA 539; 6 August 2014.