



Our ref: CRM 2018/574

18 October 2018

Mr Asher Hirsch

By email: [foi+request-4517-fa113524@righttoknow.org.au](mailto:foi+request-4517-fa113524@righttoknow.org.au)

Dear Mr Hirsch,

**Freedom of Information request**

I refer to your applications dated 19 April 2018, under *the Freedom of Information Act 1982* (the Act) seeking the following:

“I request any available documents detailing the agreements between the Australian Federal Police and the Indonesian National Police. This may include Memorandum of Understandings, agreements and communications between the two agencies.

Please limit this request to documents between 2000 and 2007.

Please further limit the request to only agreements concerning people smuggling, refugees, asylum seekers and irregular or illegal migrants.”

and

“I request any available documents detailing the agreements between the Australian Federal Police and the Indonesian National Police. This may include Memorandum of Understandings, agreements and communications between the two agencies.

Please limit this request to documents between 2008 and 2018.

Please further limit the request to only agreements concerning people smuggling, refugees, asylum seekers and irregular or illegal migrants.”

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,



Helen Drew  
Coordinator  
Freedom of Information Team  
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY  
ASHER HIRSCH (RIGHT TO KNOW)**

I, Helen Drew, Coordinator, Freedom of Information Team, 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 19 April 2018, this office received your applications in which you requested:

*“...any available documents detailing the agreements between the Australian Federal Police and the Indonesian National Police. This may include Memorandum of Understandings, agreements and communications between the two agencies.*

*Please limit this request to documents between 2000 and 2007.*

*Please further limit the request to only agreements concerning people smuggling, refugees, asylum seekers and irregular or illegal migrants.”*

and

*“I request any available documents detailing the agreements between the Australian Federal Police and the Indonesian National Police. This may include Memorandum of Understandings, agreements and communications between the two agencies.*

*Please limit this request to documents between 2008 and 2018.*

*Please further limit the request to only agreements concerning people smuggling, refugees, asylum seekers and irregular or illegal migrants.”*

On 22 April 2018, this office notified you that, pursuant to section 24(2) of the Act, your two applications would be treated as a single application as they relate to documents the subject matter of which is substantially the same.

On 2 August 2018, this office notified you of an intention to refuse to grant access to the documents sought, pursuant to s 24AB(2) of the Act.

On 9 August 2018, you agreed to revise the scope of your request to *“only final versions of MOUs and agreements.”*

**SEARCHES**

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

- a) a search of all records held by the relevant line areas within the AFP including International Operations and Crime Operations.

## WAIVER OF CHARGES

Given that the request has exceeded all statutory timeframes as outlined at Section 15 of the Act, the AFP is not able to impose any fees or charges as outlined at Regulation 5(2)&(3) of the *Freedom of Information (Charges) Regulations 1982*.

## DECISION

I have identified five documents relevant to your request. One of these documents appears to be publically available online on the INTERPOL Indonesia website. Accordingly it has not been included in this request, and a decision will not be made in relation to its release and it has not been included in the schedule.

A schedule of each remaining document and details of my decision in relation to each document is at Annexure B.

I have decided that all of the documents that relate to your request are exempt in full, pursuant to subsection 33(a)(iii) of the Act.

My reasons for this decision are set out below.

## REASONS FOR DECISION

### ***Folios to which subsection 33(a)(iii) applies:***

Subsection 33(a)(iii) of the Act provides that:

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

*(a) would, or could reasonably be expected to, cause damage to:*

*...*

*(iii) the international relations of the Commonwealth...”*

The documents identified in the Schedule as exempt under this section of the Act relate to funding agreements between the Commonwealth and a foreign government.

There are some cases where Memoranda of Understanding (‘MOUs’) to which the Commonwealth is a party have been published, including the document identified above, which has been published on the INTERPOL Indonesia website. However, in the case of the other documents which are the subject of this request, the other party to the agreement, being the Indonesian Government, has not provided its consent to the documents being released, and the documents remain confidential.

I am satisfied that disclosure of the documents containing this information by the AFP would, or could reasonably be expected to, impact the AFP’s cooperative relationship with Indonesian law enforcement authorities. I therefore find that release of the documents would be an unreasonable disclosure under subsection 33(a)(iii) 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*; 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 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***

## Schedule of documents – CRM 2018/574

Document No	Folio #	Description
1	1	Folio exempt in full: s 33(a)(iii) – Deletions are made on the grounds that disclosure would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.
	2	Folio exempt in full: s 33(a)(iii)
	3	Folio exempt in full: s 33(a)(iii)
	4	Folio exempt in full: s 33(a)(iii)
	5	Folio exempt in full: s 33(a)(iii)
	6	Folio exempt in full: s 33(a)(iii)
	7	Folio exempt in full: s 33(a)(iii)
2	8	Folio exempt in full: s 33(a)(iii)
	9	Folio exempt in full: s 33(a)(iii)
	10	Folio exempt in full: s 33(a)(iii)
	11	Folio exempt in full: s 33(a)(iii)
	12	Folio exempt in full: s 33(a)(iii)
	13	Folio exempt in full: s 33(a)(iii)
	14	Folio exempt in full: s 33(a)(iii)
	15	Folio exempt in full: s 33(a)(iii)
3	16	Folio exempt in full: s 33(a)(iii)
4	17	Folio exempt in full: s 33(a)(iii)
	18	Folio exempt in full: s 33(a)(iii)
	19	Folio exempt in full: s 33(a)(iii)
	20	Folio exempt in full: s 33(a)(iii)
	21	Folio exempt in full: s 33(a)(iii)
	22	Folio exempt in full: s 33(a)(iii)
	23	Folio exempt in full: s 33(a)(iii)

Pages 1 through 23 redacted for the following reasons:

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s 33(a)(iii)

THIS DOCUMENT HAS BEEN DECLASSIFIED  
AND RELEASED IN ACCORDANCE WITH THE  
FREEDOM OF INFORMATION ACT 1982  
(COMMONWEALTH)  
BY THE AUSTRALIAN FEDERAL POLICE