



AFP
AUSTRALIAN FEDERAL POLICE

Our ref: CRM 2018/575

22 October 2018

Mr Asher Hirsch (Right to Know)

By email: foi+request-4518-3b36ce0d@righttoknow.org.au

Dear Mr Hirsch,

Freedom of Information request

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

“Under Freedom of Information I request any available documents relating to the AFP's funding to the Indonesian National Police.

Please limit this request to the years 2009 to 2011.

Please also limit the request to documents concerning one or more of the following items:

- the establishment and construction of 12 Indonesian provincial offices dedicated to people smuggling investigations, and ongoing support for the People Smuggling Taskforce located at Indonesian National Police headquarters in Jakarta (from the 2010/2011 AFP annual report)
- provision of three high-speed patrol vessels for the Indonesian National Police, currently under construction and to be delivered in August 2011, to allow the Indonesian National Police to undertake patrols with specifically designed and equipped vessels (from the 2010/2011 AFP annual report)
- detection equipment comprising eight motorcycles, seven IT kits, seven video and still photography kits, GPS devices and surveillance equipment. Surveillance training and mentoring in the use of this equipment is continuing (from the 2010/2011 AFP annual report)
- surveillance and field kits, motor vehicles, computer equipment and office fit-outs for the newly established SATGAS teams' (from the 2009/2010 AFP annual report)”

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.

Information Publication Scheme (IPS)

It has been decided to publish the documents in part in respect of your request. Publication of the documents and any relevant documents will be made on the AFP website at <http://www.afp.gov.au/about-the-afp/information-publication-scheme/routinely-requested-information.aspx> in accordance with timeframes stipulated in section 11C of the Act.

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 letter/application in which you requested:

“Under Freedom of Information I request any available documents relating to the AFP's funding to the Indonesian National Police.

Please limit this request to the years 2009 to 2011.

Please also limit the request to documents concerning one or more of the following items:

- the establishment and construction of 12 Indonesian provincial offices dedicated to people smuggling investigations, and ongoing support for the People Smuggling Taskforce located at Indonesian National Police headquarters in Jakarta (from the 2010/2011 AFP annual report)

- provision of three high-speed patrol vessels for the Indonesian National Police, currently under construction and to be delivered in August 2011, to allow the Indonesian National Police to undertake patrols with specifically designed and equipped vessels (from the 2010/2011 AFP annual report)

- detection equipment comprising eight motorcycles, seven IT kits, seven video and still photography kits, GPS devices and surveillance equipment. Surveillance training and mentoring in the use of this equipment is continuing (from the 2010/2011 AFP annual report)

- surveillance and field kits, motor vehicles, computer equipment and office fit-outs for the newly established SATGAS teams' (from the 2009/2010 AFP annual report)”

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 11 documents relevant to your request. A schedule of each document and details of my decision in relation to each document is at Annexure B.

I have decided that some of the documents that relate to your request are released with deletions pursuant to subsections 22(1)(a)(ii), 37(2)(b) and 47E(d) of the Act. Some 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 22(1)(a)(ii) applies:

Subsection 22(1)(a)(ii) of the Act provides that:

- “(1) Where:
- (a) an agency or Minister decides:
 - (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request;”

The parts of documents identified in the Schedule under this section of the Act contain information which is considered irrelevant to the request. I have determined that information contained in some of the folios is irrelevant because it does not come within the scope of your application and thus falls outside the ambit of your request. This information refers to other issues which are not mentioned in your FOI application or is irrelevant to your application as you have agreed to exclude it from the scope of your request. Specifically, in accordance with our acknowledgement letter dated 22 April 2018, you agreed to exclude the names of AFP members, other than the Senior Executive, and direct telephone numbers, signatures and mobile telephone numbers of AFP members.

I therefore have found that those parts of the documents would be reasonably be regarded as irrelevant to the request under subsection 22(1)(a)(ii) of the Act.

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 and parts of documents identified in the Schedule as exempt under this section of the Act relate to a funding agreement between the Commonwealth and a foreign government and the policing capabilities of a foreign government.

The other party to the agreement, being the Indonesian Government, has not provided its consent to the funding agreement being released, and it remains confidential.

With respect to information revealing the policing capabilities of the Indonesian Government, disclosure of this information would confirm investigative methods and resources available to Indonesian law enforcement authorities.

The disclosure of this information may reasonably be expected to prejudice the effective use of these capabilities in investigating breaches of the law in that jurisdiction. I am satisfied that disclosure of the document or part of the document 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 am satisfied that the release of the above documents or parts of documents could reasonably be expected to cause damage to the international relations of the Commonwealth and are exempt under subsection 33(a)(iii).

Folios to which subsection 37(2)(b) applies:

Subsection 37(2)(b) of the Act provides that:

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

...

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;”

The parts of the documents identified in the Schedule as exempt under this section of the Act contain information that would disclose AFP capabilities in relation to investigating breaches of the law. Disclosure of this information would be reasonably likely to prejudice the effectiveness of those capabilities as they are not generally known to the public.

The requirement that disclosure 'would, or could reasonably be expected to' have this impact requires more than a mere risk or possibility.

Some of the methods and procedures may be the subject of speculation, but disclosure would confirm the methods and resources available to law enforcement officers and the methods upon which the AFP rely in the investigation of criminal activity. In my view, official confirmation of this information would provide persons with an advantage to modify their behaviour to better avoid detection in the future. I find that the parts of the documents would be exempt under this section of the Act.

I find that release of the parts of the documents would be an unreasonable disclosure under subsection 37(2)(b) of the Act.

Folios to which subsection 47E(d) applies:

Subsection 47E(d) of the Act provides that:

“A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency;...”.*

The parts of documents identified in the schedule as exempt under this section of the Act contain operational information pertaining to security and international cooperation, the release of which would have a substantial adverse effect on the conduct and effectiveness of AFP operations. I am satisfied that the parts of documents are conditionally exempt.

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

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 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) that if information concerning the operation was revealed, it may have a substantial adverse effect on the conduct of similar operations in the future; and
- (d) if such information was disclosed, it may prejudice security, law enforcement and public safety.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (c), and (d) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure the effectiveness current AFP operations.

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;
- ❖ consultation with relevant Commonwealth Agencies;
- ❖ *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

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.

Schedule of documents – CRM 2018/575

Document No	Folio #	Description
1	1	s 22(1)(a)(ii): Exempted material would disclose information that would reasonably be regarded as irrelevant to the request.
	2	s 22(1)(a)(ii)
	3	s 22(1)(a)(ii)
		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	4	s 22(1)(a)(ii)
	5	s 22(1)(a)(ii)
	6	s 22(1)(a)(ii)
		s 33(a)(iii)
3	7	s 22(1)(a)(ii)
		s 33(a)(iii)
	8	s 22(1)(a)(ii)
4	9	s 22(1)(a)(ii)
		s 37(2)(b): Deletions are made on the grounds that release would disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures. s 33a(iii)
5	10	s 22(1)(a)(ii)
		s 33(a)(iii)
	11	s 22(1)(a)(ii)
		s 33(a)(iii)
6	12	s 22(1)(a)(ii)
	13	s 22(1)(a)(ii)
	14	s 22(1)(a)(ii)
		s 33(a)(iii)
7	15	Folio exempt in full: s 33(a)(iii)
	16	Folio exempt in full: s 33(a)(iii)
	17	Folio exempt in full: s 33(a)(iii)
	18	Folio exempt in full: s 33(a)(iii)
8	19	Released in full
	20	Released in full
	21	s 22(1)(a)(ii)

		s 47E(d): Exempted material would disclose information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the AFP and would be contrary to the public interest. Access must be given unless it would be contrary to the public interest.
	22	s 47E(d)
	23	Released in full
	24	s 22(1)(a)(ii)
	25	Released in full
	26	Released in full
	27	Released in full
	28	Released in full
	29	Released in full
9	30	Folio exempt in full: s 33(a)(iii)
	31	Folio exempt in full: s 33(a)(iii)
	32	Folio exempt in full: s 33(a)(iii)
	33	Folio exempt in full: s 33(a)(iii)
10	34	Released in full
	35	Released in full
	36	s 22(1)(a)(ii)
		s 33(a)(iii)
		s 47E(d)
	37	s 47E(d)
	38	Released in full
	39	s 22(1)(a)(ii)
	40	Released in full
	41	Released in full
	42	Released in full
	43	Released in full

	44	Released in full
11	45	Folio exempt in full: s 33(a)(iii)
	46	Folio exempt in full: s 33(a)(iii)
	47	Folio exempt in full: s 33(a)(iii)
	48	Folio exempt in full: s 33(a)(iii)
	49	Folio exempt in full: s 33(a)(iii)