



GPO Box 401 Canberra City ACT 2601  
Telephone 02 6131 6131  
Email [foi@afp.gov.au](mailto:foi@afp.gov.au)  
[www.afp.gov.au](http://www.afp.gov.au)  
ABN 17 864 931 143

Our ref: CRM 2018/683

11 September 2018

Mr Asher Hirsch

By email: [foi+request-4653-92fc49c4@righttoknow.org.au](mailto:foi+request-4653-92fc49c4@righttoknow.org.au)

Dear Mr Hirsch,

**CRM 2018/683 – request for internal review of an FOI decision**

On 18 June 2018 you made an application to the AFP seeking access under the *Freedom of Information Act 1982* (the FOI Act) to:

“a copy of the ‘Memorandum of Understanding between the Indonesian National Police and the Australian Federal Police on Combating Transnational Crime and Developing Police Cooperation’ dated June 13, 2002.”

On 16 July 2018 the AFP made a decision on your request. On 9 August 2018 you sought internal review of that decision.

In your application for internal review, you:

- disputed the reasoning in the decision that ‘MOUs between the Commonwealth and foreign governments are, by their nature, confidential agreements’
- noted that other MOUs between the Commonwealth and foreign governments are public, and
- drew attention to a MOU between the Australian and Indonesian governments currently available on the Interpol Indonesia website.

This letter sets out my decision on internal review. I am an authorised decision-maker under section 23 of the FOI Act.

**DECISION**

I have identified 1 document relevant to your request, comprised of 10 folios.

I have decided to affirm the decision made on 16 July 2018 to exempt this document in full pursuant to s 33(a)(iii) of the Act.

My reasons for this decision are set out below.

## **REASONS FOR DECISION**

### **Findings of Fact and Reason for Decision**

#### ***Section 33 – documents affecting national security, defence or international relations***

Under s 33(a)(iii) a document is an exempt document if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

The document which has been identified in response to your request is a memorandum of understanding (MOU) between the Australian Government and the Indonesian Government. The document is not in the public domain and remains a confidential agreement.

As you have noted, there are some cases where MOUs to which the Commonwealth is a party have been published, including the MOU which has been published on the Interpol Indonesia website.

However, in the case of the MOU which you have sought, the other party to the agreement, being the Indonesian Government, has not provided its consent to the document being released, and the document remains confidential.

In these circumstances, the disclosure of the document could reasonably be expected to cause damage to the international relations of the Commonwealth, and accordingly, I consider the document is an exempt document under s 33(a)(iii) of the Act.

### **Material Taken Into Account**

In making my decision, I took account of:

- ❖ the terms of your request;
- ❖ the contents of the documents
- ❖ advice from AFP officers with responsibility for matters relating to the documents to which you sought access;
- ❖ relevant provisions of the FOI Act;
- ❖ consultation responses from third parties consulted in accordance with the FOI Act;
- ❖ advice from other Commonwealth Departments; and
- ❖ the Guidelines issued by the Office of the Australian Information Commissioner (OAIC).

## **RIGHTS OF REVIEW**

If you are dissatisfied with this decision, you may seek a review by the Information Commissioner (IC).

In making your application you need to provide:

- an address for notices to be sent (this can be an email address).
- A copy of this decision.

It would also help if you set out the reasons for review in your application.

Applications for a review of the decision can be made online – please see <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

## **Right to Complain**

Section 70 of the FOI Act provides that a person may complain to the IC about action taken by this Department in relation to your application.

A complaint to the IC can be made in writing and must identify the agency against which the complaint is made.

The IC can 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.

Yours sincerely,



Helen Drew  
Coordinator, FOI and Information Law  
Australian Federal Police