



AFP

AUSTRALIAN FEDERAL POLICE

Our ref: CRM 2019/223

5 March 2019

Mr Asher Hirsch

By email: foi+request-4918-99e7a589@righttoknow.org.au

Dear Mr Hirsch,

Freedom of Information request

I refer to your application dated 26 October 2018 under *the Freedom of Information Act 1982* (the Act) seeking the following:

“the Internal Audit Report into People Smuggling dated December 2012.”

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)

As notified to you on 29 October 2018 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,

Adam Raszewski
Acting Coordinator
Freedom of Information Team
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
ASHER HIRSCH**

I, Adam Raszewski, Acting 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 26 October 2019, this office received your application in which you requested:

“the Internal Audit Report into People Smuggling dated December 2012.”

On 19 October 2018, you agreed to an extension of time pursuant to section 15AA of the Act.

On 21 December 2018, a further extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AB of the Act to notify you of a decision by 24 January 2019.

I note that the statutory timeframe has expired and apologise for the delay and any inconvenience this may have caused you.

SEARCHES

In relation to this request, as search was undertaken by the AFP Crime Operations portfolio for the relevant document.

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 one document relevant to your request. A schedule of the document and details of my decision in relation to the document is at Annexure B.

I have decided that some of the folios itemised at Annexure B are released to you in their entirety. Some of the folios that relate to your request are released with deletions pursuant to subsections 22(1)(a)(ii), 33(a)(iii), 34(3), 47C, 47E(d) and 47F 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 documents or parts of documents identified in the Schedule as exempt 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 should be deemed to be exempt because it does not come within the scope of your application and thus falls outside the ambit of your request. By way of further explanation, these exempt folios cover information which refers to other issues which are not mentioned in your FOI application or which you have not objected to exclude from the scope of your request. For example, the names of AFP members, other than the Senior Executive, and direct telephone numbers, signatures and mobile telephone numbers of AFP members have been removed.

I therefore have found that those documents or 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 or parts of documents identified in the Schedule as exempt under this section of the Act relates to information provided by an agency of a foreign government. The information was provided to the AFP by a foreign government for investigative purposes on the understanding that it would only be used for that purpose and not be disseminated further. I am satisfied that to grant access to the documents would, or could reasonably be expected to cause damage to the international relations of the Commonwealth. If these documents were to be released, it would be likely to inhibit the exchange of information to the AFP and affect cooperation with the Commonwealth's foreign law enforcement partners.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 33(a)(iii) of the Act.

Folios to which subsection 34(3) applies:

Subsection 34(3) of the Act provides that:

"A document is an exempt document if:

...

- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed."

The documents or parts of documents identified in the schedule contain information that was subject to Cabinet deliberation. I find that release of the documents or parts of the documents are exempt under subsection 34(3) of the Act.

Folios to which section 47C applies:

Section 47C of the Act provides that:

*“(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth.”*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information, the release of which is exempt on the grounds that it is an internal working document of the AFP. Provision of these folios would disclose matter in the nature of consultation and deliberation that has taken place for the purposes of the deliberative processes involving the operational functions of the Australian Federal Police.

Further, the document records advice, recommendations and opinion in material prepared by the AFP during which time members were required to communicate directly, freely and confidentially on issues which are considered to be sensitive.

There is also public interest in protecting the integrity of the decision-making process by separating the final decision-making policy or policy making steps and the reasons therefore from the opinions and advice of the officials who contributed to the consideration.

Subsection 47C(2) provides that:

“... ”

(2) Deliberative matters does not include either of the following:

- (a) operational information (see section 8A);*
- (b) purely factual material.*

As the opinion in this information involved analysis of the facts of the review to form a judgement, I am satisfied that this information is not purely factual material and therefore is not excluded under subsection 47C(2) of the Act.

I have considered the public interest factors both in favour and against disclosure of the information in these folios to determine whether disclosure would be contrary to the public interest.

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) if such information was disclosed, it would restrict the ability of AFP employees in future to record their opinions directly, freely and confidentially during an investigation process;

- (d) disclosure would prejudice the agency's ability to form an analysis and present its recommendations in relation to law enforcement investigations; and
- (e) that if information concerning the documents was revealed, it may compromise the AFP's operations and damage relations with external stakeholders.

I have considered the public interest factors both in favour and against disclosure and in my view, in relation to these documents, the factors at (c), (d) and (e) against disclosure outweigh the factors in favour of disclosure. I find that release of the documents or parts of the documents would be an unreasonable disclosure under section 47C 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 documents or parts of documents identified in the schedule as exempt under this section of the Act contain information, the release of which would have a substantial adverse effect on the conduct of AFP operations, particularly in relation to its people smuggling operations. The release of this information could potentially jeopardise the effectiveness of these operations, specifically its investigative functions as a law enforcement agency.

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) the need for the agency to maintain the confidentiality with regard to the subject matter and the circumstances in which the information was obtained and collated;
- (d) 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
- (e) 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), (d) and (e) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure continued cooperation during police investigations and the effectiveness and integrity of current procedures. I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 47E(d) of the Act.

Folios to which section 47F applies:

Section 47F of the 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).”

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain 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 these documents contain personal information.

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;
- (b) the extent to which the information is well known;
- (c) 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;
- (d) the availability of the information from publicly accessible sources;
- (e) the current relevance of the information; and
- (f) 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:

- (g) prejudice to the protection of an individual's right to privacy;
- (h) the risk that if people are aware their personal information could be disclosed, that this would impede the flow of information to the police; and
- (i) if such information was disclosed, it may discourage public cooperation in AFP investigations.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (g) to (i) above and conclude that on balance, disclosure is not in the public interest. I find that the release of these documents or parts of documents would be an unreasonable disclosure of personal information and are therefore exempt under section 47F 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;

- ❖ 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 VI of the Act

Internal Review by the AFP

Section 53A of the Act gives you the right to apply for an internal review in writing to the Australian Federal Police (AFP) within 30 days of being notified of a decision. No particular form is required. It would assist the independent AFP decision-maker responsible for the internal review if you set out in the application, the grounds on which you consider that the decision should be reviewed.

Section 54B of the Act provides that the internal review submission must be made within 30 days. Applications for a review of the decision should be addressed to:

Freedom of Information
Australian Federal Police
GPO Box 401
Canberra ACT 2601

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.