

Our ref: CRM 2014/257

10 July 2014

Mr Henare Degan  
Email: [foi+request-501-5d2cd358@righttoknow.org.au](mailto:foi+request-501-5d2cd358@righttoknow.org.au)

Dear Mr Degan,

**Your Freedom of Information request to the Australian Federal Police**

I refer to your email dated 29 December 2013, under the *Freedom of Information Act 1982* (the Act) seeking the following:

*"I kindly request a copy of the following senate file listed in Harradine:*

*2013/00003286 MOU BETWEEN \*\*\*\* AND AFP IN RELATION TO THE GRANTING OF ON-LINE ACCESS TO DATA/INFORMATION SYSTEMS TO AUTHORISED AFP PERSONS"*

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)***

Please be advised that in accordance with section 11C of the Act, it has been decided to publish the documents in part in respect of your request. Publication of the documents will be made on the AFP website at <http://www.afp.gov.au/about-the-afp/information-publication-scheme/routinely-requested-information.aspx> between 5 and 10 days after notification of this decision.

Yours sincerely,



Superintendent Allan J Spencer  
Coordinator  
Information Access (Freedom of Information)  
Government Relations

## **STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY HENARE DEGAN**

I, Allan J Spencer, Coordinator, Information Access 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 29 December 2013, this office received your email in which you requested:

*"I kindly request a copy of the following senate file listed in Harradine:*

*2013/00003286 MOU BETWEEN \*\*\*\* AND AFP IN RELATION TO THE GRANTING OF ON-LINE ACCESS TO DATA/INFORMATION SYSTEMS TO AUTHORISED AFP PERSONS"*

On 22 January 2014, you agreed to an extension of 15 days pursuant to section 15AA of the Act.

On 3 February 2014, you were notified of the requirement to consult a third party pursuant to subsection 15(6) of the Act.

On 28 April 2014, a further extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AC of the Act to notify you of a decision by 9 June 2014. As you are aware, the AFP has been unable to finalise your request within the extended timeframe. I apologise for any inconvenience the delay may have caused you.

### **SEARCHES**

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

- a) a "manage records" search of the AFP's investigation case management system PROMIS for records relating to file number "2013/00003286"; and
- b) a search of all records held by AFP case officers with responsibility for matters relating to the documents to which you sought access.

### **DECISION**

I have identified 29 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 itemised at Annexure B are released to you in their entirety. Some of the documents that relate to your request are released with deletions pursuant to subsection 37(2)(b), 47B, 47C, 47E(d) and 47F of the Act.

My reasons for this decision are set out below.

## **REASONS FOR DECISION**

### ***Folios to which subsection 37(2)(b) apply:***

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 methods and procedures used by the AFP in investigations of breaches of the law. Disclosure of this information would be reasonably likely to prejudice the effectiveness of those methods and procedures as these methods and procedures are not generally known to the public.

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

### ***Folios to which section 47B apply:***

Section 47B of the Act provides that:

*"A document is conditionally exempt if disclosure of the document under this Act:*

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or*
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth."*

The parts of the documents identified in the Schedule as exempt under this section of the Act disclose information sharing processes between the AFP and Victoria Police (VicPol), the disclosure of which could reasonably be expected to damage the AFP's relations with VicPol. In addition, the information was communicated to the AFP for the purposes of a Commonwealth and State working relationship. To divulge this information could damage the relationship

between the AFP and VicPol, and would be likely to inhibit the future supply of information to the AFP.

I have considered the public interest factors both in favour and against disclosure of the information in these folios to determine whether disclosure would, on balance, be in 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 FOI 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 may inhibit the future supply of information from a State agency to the AFP, which would prejudice the conduct of future investigations of this kind; and
- (d) prejudice the AFP's ability to maintain working relationships with the State Police Departments; and
- (e) prejudice the AFP's ability to obtain similar information in the future.

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. If the documents were released, it would only make a slight contribution to governmental accountability, but the risk of damage to relations between the AFP and State agencies is very high and therefore it would be contrary to the public interest to release this information.

I find that release of parts of the documents would be an unreasonable disclosure under section 47B of the Act.

***Folios to which section 47C apply:***

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 parts of the 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 parts of the 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 FOI 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 parts of the documents would be an unreasonable disclosure under section 47C of the Act.

**Folios to which subsection 47E(d) apply:**

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 the 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, specifically its operational functions in ensuring public safety, as it reveals how information is obtained and actioned for the purposes of protecting the public.

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 FOI 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 subject was revealed, it may have a substantial adverse effect on the conduct of similar matters 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 public safety during police operations and the effectiveness of current procedures.

I find that release of parts of the documents would be an unreasonable disclosure under subsection 47E(d) of the Act.

**Folios to which section 47F apply:**

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 FOI 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 the protection of an individual's right to privacy;
- (h) impede the flow of information to the police;
- (i) if such information was disclosed, it may discourage future cooperation in AFP operations.

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 parts of the documents would be an unreasonable disclosure of personal information and an unreasonable disclosure 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 State Agencies;
- ❖ *Freedom of Information Act 1982*;
- ❖ Guidelines issued by the Department of Prime Minister and Cabinet; 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:

Government Relations  
 Information Access (FOI)  
 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 2999  
Canberra ACT 2601

***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 DECISION – CRM 2014/257**  
**RELEASE OF DOCUMENTS – HENARE DEGAN**

Document No	Folio No	Date	Author/ Addressee	Description	Exemption/Public Interest Claimed	Reason
1	1-9	11/9/2009	Australian Federal Police (AFP)	Memorandum of Understanding between Victoria Police and Australian Federal Police in relation to the granting of on-line access to data/information systems to authorised AFP persons (MOU)	Released in full.	-
2	10-14	29/1/2013	AFP	Email correspondence	Released in full	-
3	15	10/12/2012	AFP	Amendment to MOU	Released in full	-
4	16	Undated	AFP	Amendment to MOU (Schedule B)	Released with deletions 47B	<b>s47B</b> Exempted material is information detailing information exchanged between the State police forces and the Commonwealth Government. Deletions to this material are made on the grounds that it is important that information between these agencies remain confidential.

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	5	17	Undated	AFP	Amendment to MOU (Schedule C)	Released in full	Communication of the information on the documents could affect the AFP's relations with State police forces. Access must be given unless it would be contrary to the public interest.
	6	18-21	Undated	AFP	Amendment to MOU (Appendix B: Section 2)	Released with deletions 37(2)(b) 47E(d) 47B	<p><b>s37(2)(b)</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 or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.</p> <p><b>s47E(d)</b> 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.</p>

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7	22	8/1/2013	AFP	AOCC CMS Coversheet	Released with deletions 47F	Access must be given unless it would be contrary to the public interest. <b>s47B</b> <b>s47F</b> Deletions are made on the grounds that disclosure would involve the unreasonable provision of personal details of people other than the FOI applicant. Access must be given unless it would be contrary to the public interest.
8	23-24	7/1/2013	AFP	Minute	Released with deletions 37(2)(b) 47C 47E(d) 47F	<b>s37(2)(b)</b> <b>s47C</b> To grant access to the document would disclose information in the nature of, or relating to opinion, advice or recommendation obtained/prepared in the course of the deliberative processes of an agency. Access must be given unless it would be contrary to the public interest. <b>s47E(d)</b> <b>s47F</b>
9	25-34	11/9/2009	AFP	MOU	Released in full	-
10	35-36	27/11/2012	AFP	CMS Cover Sheet	Released with deletions 37(2)(b) 47B	<b>s37(2)(b)</b> <b>s47B</b> <b>s47E(d)</b> <b>s47F</b>

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11	37	5/12/2012	AFP	Melbourne Office Internal CMS Form	Released with deletions 47F	47E(d) 47F	s47F
12	38	23/11/2012	AFP	Minute`	Released with deletions 47B 47C 47E(d) 47F	s47B s47C s47E(d) s47F	
13	39-40	23/11/2012	AFP	CMS Cover Sheet	Released with deletions 37(2)(b) 47B 47E(d) 47F	s37(2)(b) s47B s47E(d) s47F	
14	41-42	29/10/2012	AFP	Minute	Released with deletions 47B 47C 47E(d)	s47B s47C s47E(d)	
15	43-44	29/10/2012	AFP	Minute - LEAP Notification Project	Released with deletions 47B 47C 47E(d)	s47B s47C s47E(d)	
16	45	10/12/2012	Victoria Police (VicPol)	Correspondence	Released in full	-	
17	46-54	11/9/2009	AFP	MOU	Released in full	-	
18	55-56	11/11/2011	AFP	Minute	Released with deletions	s47F	

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19	57-60	12/9/2011	AFP	Attachment 2 – Risk Assessment Register	47F Released with deletions 47C 47E(d)	s47C s47E(d)
20	61	31/8/2011	VicPol	Correspondence	Released in full	-
21	62	2/9/2011	AFP	Amendments to MOU	Released in full	-
22	63	Undated	AFP	Amendments to MOU	Released with deletions 47B 47E(d)	s47B s47E(d)
23	64-77	11/9/2009	AFP	MOU	Released in full	-
24	78	Undated	AFP	Schedule A: AFP Approving Officer	Released with deletions 47E(d)	s47E(d)
25	79	Undated	AFP	Schedule B: Details of Contact Officers – VicPol and AFP	Released with deletions 47B 47E(d)	s47B s47E(d)
26	80	Undated	AFP	Schedule C: Victoria Police Information Systems to which Access is granted.	Released in full	-
27	81-126	Undated	Commissioner of Law Enforcement Data Security (CLEDS)	Appendix A: Standards for Victorian Police law enforcement data security	Released in full	-
28	127-130	Undated	AFP/VicPol	Appendix B: Guideline, Forms and	Released in full	-

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29	131-147	Undated	AFP/VicPol	Procedures (Table of Contents) Appendix B: Section 1	Released with deletions 37(2)(b) 47B 47E(d)	s37(2)(b) s47B s47E(d)
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Authorised Decision Maker: Superintendent Allan J. Spencer  
Coordinator  
Information Access (Freedom of Information)  
Government Relations  
Australian Federal Police

Date of Decision: 10 July 2014