



AFP

AUSTRALIAN FEDERAL POLICE

Our ref: CRM2019/332

13 February 2019

Mr Jackson Gothe-Snape

By email: foi+request+5155-a2027e1a@righttoknow.org.au

Dear Mr Gothe-Snape,

Freedom of Information request

I refer to your application dated 12 December 2018, under *the Freedom of Information Act 1982* (the Act) seeking the following:

“...Whatsapp messages between the Minister’s office and AFP’s Neil Gaughan in 2018, including when they were sent and the content of the message.”

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, Part 2 of the Act establishes an Information Publication Scheme (IPS) for Australian Government agencies subject to the Act. In accordance with section 11C of the Act, an agency is required to publish information on their website following the notification of a decision in respect of a freedom of information request.

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

Yours sincerely,

Helen Drew
Coordinator
Freedom of Information Team
Chief Counsel Portfolio

UNCLASSIFIED

STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY JACKSON GOTHE-SNAPE

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 12 December 2018, this office accepted transfer from the Department of Home Affairs of your application in which you requested:

“...Whatsapp messages between the Minister’s office and AFP’s Neil Gaughan in 2018, including when they were sent and the content of the message.”

On 10 January 2019, an extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AB of the Act.

SEARCHES

In relation to this request, searches were undertaken by Deputy Commissioner Neil Gaughan for documents within scope of your request.

WAIVER OF CHARGES

Given that the request has totalled only two pages and was not a complex request to process, I am waiving any further fees and charges which are normally associated with the processing of applications under the Act.

DECISION

I have identified two folios documents relevant to your request. A schedule of each folio and details of my decision in relation to each folio is at Annexure B.

I have decided that the folios itemised at Annexure B are released to you with deletions pursuant to subsections 22(1)(a)(ii) and 37(1)(a) of the Act.

My reasons for this decision are set out below.

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 the 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. The AFP, in its management of FOI requests, excludes the direct mobile telephone numbers of its staff. We consider this information to be irrelevant as it is not specifically sought as part of the request.

I therefore have found that 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 37(1)(a) applies:

Subsection 37(1)(a) of the Act provides that:

- “(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;”*

The parts of the documents identified in the schedule as exempt under this section of the Act contain information which if disclosed would or could reasonably be expected to prejudice the conduct of a current investigation.

I find that these parts of documents are exempt from disclosure under subsection 37(1)(a) 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 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.

SCHEDULE OF DECISION – CRM2019/332
RELEASE OF DOCUMENTS – Jackson GOTHE-SNAPE

Document No	Folio No	Date	Author	Description	Exemption	Reason
1	1	18/5/2018	Australian Federal Police (AFP)	Screen shot of Whatsapp message	s22(1)(a)(ii) s37(1)(a)	s22(1)(a)(ii) Exempted material would disclose information that would reasonably be regarded as irrelevant to the request. s37(1)(a) Provision of this document would disclose matter that would reasonably be expected to prejudice the conduct of an investigation of a breach, or possible breach, of the law, or prejudice the enforcement or proper administration of the law in a particular instance.
2	2	15/10/2018	AFP	Screen shot of Whatsapp message	s22(1)(a)(ii) s37(1)(a)	As above.

Authorised Decision Maker:

Helen Drew
Coordinator
Freedom of Information
Australian Federal Police

Date of Decision:

13 February 2019