



AFP

AUSTRALIAN FEDERAL POLICE

Our ref: CRM 2019/713

18 July 2019

Mr Andrew Smith

By email: foi+request-5484-99e72e3d@righttoknow.org.au

Dear Mr Smith

Freedom of Information request

I refer to your application dated 23 June 2019 under the *Freedom of Information Act 1982* (the Act) seeking the following:

"I request a copy of the search warrant executed by the AFP against the Australian Broadcasting Corporation (ABC) on June 5th 2019 (hereinafter referred to as the document).

I consider all material in the warrant to be in scope and object to any exclusions of data from the document (except Direct telephone numbers, signatures and mobile telephone numbers of AFP members). I also object to the exclusion of any names or material that may be described in the warrant as portions of it are already publicly available at <https://twitter.com/TheLyonsDen/status/1136134244181262341> and <https://twitter.com/TheLyonsDen/status/1136134709937786881>."

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
ANDREW SMITH**

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 23 June 2019, this office received your application in which you requested:

"I request a copy of the search warrant executed by the AFP against the Australian Broadcasting Corporation (ABC) on June 5th 2019 (hereinafter referred to as the document).

I consider all material in the warrant to be in scope and object to any exclusions of data from the document (except Direct telephone numbers, signatures and mobile telephone numbers of AFP members). I also object to the exclusion of any names or material that may be described in the warrant as portions of it are already publicly available at <https://twitter.com/TheLyonsDen/status/1136134244181262341> and <https://twitter.com/TheLyonsDen/status/1136134709937786881>."

SEARCHES

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

WAIVER OF CHARGES

Given that the request has totalled only eight 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 one document 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 the document is released with deletions pursuant to section 47F of the Act.

My reasons for this decision are set out below.

REASONS FOR DECISION

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 need for the agency to maintain the confidentiality with regard to the subject matter and the circumstances in which the information was obtained;
- (i) if such information was disclosed, it may discourage public cooperation in AFP investigations; and
- (j) the need for the agency to maintain the confidentiality with regard to the subject matter and the effect that disclosure of the information may have on third parties.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (g) to (j) 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;

❖ *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.

UNCLASSIFIED

SCHEDULE OF DECISION – CRM 2019/713
RELEASE OF DOCUMENTS – ANDREW SMITH

Document No	Folio No	Date	Author	Description	Exemption	Reason
1	1-8	3/6/19	Australian Federal Police (AFP)	Search warrant	Released in part: S47F	s47F 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.

Authorised Decision Maker:

Helen Drew
Coordinator
Freedom of Information
Australian Federal Police

Date of Decision:

July 2019

UNCLASSIFIED

COMMONWEALTH OF AUSTRALIA
CRIMES ACT 1914: SECTION 3E
SEARCH WARRANT FOR SEARCH OF A PREMISES



To: Ian Robert Brumby
 a constable within the meaning of the *Crimes Act 1914*, who is the executing officer in relation to this warrant;

And to any other constable whose name may be written on this warrant in accordance with section 3C(1) of the *Crimes Act 1914*, in which event that constable shall be the executing officer in relation to this warrant:

Whereas I Martin Kane,
 Registrar

an issuing officer within the meaning of section 3E of the *Crimes Act 1914*, am satisfied by information on oath that there are reasonable grounds for suspecting that there is (or will within the next 72 hours be) at the premises located at:

The Australian Broadcasting Corporation (ABC), ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales

evidential material, as defined in the *Crimes Act 1914*, which satisfies ALL of the following three conditions namely:

First condition: Things which are:

originals or copies of any one or more of the following, including any of them which are stored on a computer, or on a computer storage device, or on any other type of storage medium or storage device:

- Handwritten/digital notes
- Diary/ies
- Correspondence – internal and external
- Emails and other electronic forms of messaging
- Minutes
- Reports
- Briefing Documents
- Assessments
- Graphics, sketches, photographs or imagery/vision – drafts and final
- Story pitch
- Planning logs
- Broadcast and online schedules
- Raw or unedited footage in its entirety

- Journalist's piece to camera
- Scripts – drafts and finals including voice overs
- Story boards/plans
- Status updates
- Website content
- Documents classified as 'Secret'

Together with any manual, instruction, password or other thing that assists to gain access to or interpret or decode any of the above things.

Second condition: And which relate to any one or more of the following:

- David McBRIDE
- Daniel (Dan) OAKES
- Samuel (Sam) CLARK
- Gaven MORRIS
- Chris SMITH
- Australian Broadcasting Corporation (ABC)
- National Reporting Team
- Australian Defence Force (ADF)
- Department of Defence
- The Australian Army
- Special Forces
- Special Operations Command (SOCOMD)
- Special Operations Task Group (SOTG)
- Special Air Service Regiment (SASR)
- 2nd Commando Company (2CDO)
- Headquarters Joint Operations Command (HQJOC)
- Operation SLIPPER
- Afghanistan
- The 7.30 Report
- The Afghan Files
- Inside the Afghan Files
- Rules of Engagement
- The Ops Room
- Ghost Three Zero
- Chief of the Defence Force (CDF)
- Acting (and/or) Secretary of Defence
- Chief of Army (CA)

- Chief of Joint Operations (CJOPS)
- <http://theopsroom.com>
- <https://www.abc.net.au/news/2017-07-11/inside-the-afghan-files/8696182>
- <https://www.facebook.com/abcnews.au/videos/inside-the-afghan-files/10156950722999988/>
- <https://www.abc.net.au/7.30/afghan-veteran-raises-disturbing-allegations-over/8695400>
- <https://www.abc.net.au/news/2017-07-11/killings-of-unarmed-afghans-by-australian-special-forces/8466642>
- <https://www.abc.net.au/news/2017-07-11/defence-inquiry-investigating-killing-of-taliban-detainee-in-hut/8616602>
- <https://www.abc.net.au/news/2017-07-11/unarmed-men,-children-among-casualties-of-elite-forces/8424944>
- <https://www.abc.net.au/news/2017-07-11/the-spy-and-the-sas-solider-with-a-loaded-glock/8496608>
- <https://www.abc.net.au/news/2017-07-11/afghan-files-australias-secretive-rules-of-engagement/8496672>
- <https://www.abc.net.au/news/2017-07-11/afghan-files-shed-light-on-notorious-severed-hands-case/8496654>
- <https://www.abc.net.au/news/2017-07-11/relations-between-australias-special-forces-unhealthy/8496616>

Third condition:

And as to which there are reasonable grounds for suspecting that they will afford evidence as to the commission of the following indictable offence(s) against the laws of the Commonwealth:

Between 14 April 2016 and 1 October 2016, s47F gave s47F s47F military information, contrary to section 73A(1) of the *Defence Act 1903* (Cth).

Between 14 April 2016 and 1 October 2016, s47F unlawfully obtained military information, contrary to section 73A(2) of the *Defence Act 1903* (Cth).

Between 1 March 2013 and 20 December 2014, s47F stole property belonging to the Commonwealth, contrary to section 131.1(1) of the *Criminal Code Act 1995* (Cth).

About Between 14 April 2016 and 1 October 2016, s47F dishonestly received stolen property from s47F knowing or believing that the property was stolen, contrary to section 132.1 of the *Criminal Code Act 1995* (Cth).

About 1 May 2016, s47F unlawfully disclosed a fact or document which came into his knowledge by virtue of him being a Commonwealth officer,

contrary to section 70(1) of the *Crimes Act 1914* (Cth)

I hereby issue this warrant which authorises you to enter and search the premises described above.

AND by virtue of section 3F(1) of the *Crimes Act 1914* this warrant authorises the executing officer or a constable assisting to do all of the following;

- enter the premises described above at anytime and execute the warrant;
- if the premises are a conveyance, to enter the conveyance, wherever it is;
- search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes;
- search the premises for any evidential material that satisfies ALL of the three conditions specified above and to seize any such evidential material that may be found;
- seize any other thing found at the premises in the course of the search that the executing officer or the constable assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates;
 - (ii) evidential material in relation to another offence that is an indictable offence; or
 - (iii) evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act).

if the executing officer or the constable assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence;

- seize any other thing found at the premises in the course of the search that the executing officer or the constable assisting believes on reasonable grounds to be a seizable item, in that it is a thing that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

AND by virtue of section 3F(2A) of the *Crimes Act 1914* this warrant authorises the executing officer or a constable assisting to do all of the following:

- to use:
 - a computer, or data storage device, found in the course of a search authorised under the warrant; or
 - a telecommunications facility operated or provided by the Commonwealth or a carrier; or
 - any other electronic equipment; or
 - a data storage device;

for the purpose of obtaining access to data (the **relevant data**) that is held in the computer or device found in the course of a search authorised under the warrant at any time when the warrant is in force, in order to determine

whether the relevant data is evidential material of a kind specified in the warrant; and

- if necessary to achieve the purpose mentioned above - to add, copy, delete or alter other data in the computer or device found in the course of a search authorised under the warrant; and
- if, having regard to other methods (if any) of obtaining access to the relevant data which are likely to be as effective, it is reasonable in all the circumstances to do so:
 - to use any other computer or a communication in transit to access the relevant data; and
 - if necessary to achieve that purposes - to add, copy, delete or alter other data in the computer or the communication in transit; and
- to copy any data to which access has been obtained, and that:
 - appears to be relevant for the purposes of determining whether the relevant data is evidential material of a kind specified in the warrant; or
 - is evidential material of a kind specified in the warrant; and
- to do any other thing reasonably incidental to any of the above authorised by section 3F(2A).

AND by virtue of section 3F(2B) of the *Crimes Act 1914* this warrant authorises the executing officer or a constable assisting to do all of the following:

- to use:
 - a computer found in the course of a search authorised under the warrant; or
 - a telecommunications facility operated or provided by the Commonwealth or a carrier;
 - any other electronic equipment;

for the purpose of obtaining access to data (the **relevant account-based data**) that is account-based data in relation to:

- a person who is the owner or lessee of the computer found in the course of a search authorised under the warrant; or
- a person who uses or has used the computer found in the course of a search authorised under the warrant;
- a deceased person who, before the person's death, was the owner or lessee of the computer found in the course of a search authorised under the warrant; or
- a deceased person who, before the person's death, used the computer found in the course of a search authorised under the warrant;

in order to determine whether the relevant account-based data is evidential material of a kind specified in the warrant; and

- if necessary to achieve the purpose mentioned above - to add, copy, delete or alter other data in the computer found in the course of a search authorised under the warrant; and

- if, having regard to other methods (if any) of obtaining access to the relevant account-based data which are likely to be as effective, it is reasonable in all the circumstances to do so:
 - to use any other computer or a communication in transit to access the relevant account-based data; and
 - if necessary to achieve that purpose-to add, copy, delete or alter other data in the computer or the communication in transit; and
- to copy any data to which access has been obtained, and that:
 - appears to be relevant for the purposes of determining whether the relevant account-based data is evidential material of a kind specified in the warrant; or
 - is evidential material of a kind specified in the warrant; and
- to do any other thing reasonably incidental to any of the above authorised by section 3F(2B).

This warrant does not authorise the executing officer or a constable assisting to conduct a search of a person who is at or near the premises when the warrant is executed.

And, by virtue of section 3G of the *Crimes Act 1914*, in executing this warrant:

- the executing officer may obtain such assistance as is necessary and reasonable in the circumstances;
- the executing officer, and any constable assisting in the execution of this warrant who is a police officer, may use such force against persons or things as is necessary and reasonable in the circumstances; and
- any person who has been authorised by the executing officer to assist in the execution of this warrant, but who is not a police officer, may use such force against things as is necessary and reasonable in the circumstances;

And the executing officer or a constable assisting may exercise such other of the powers available under Division 2 of Part IAA of that Act as are appropriate in the circumstances of the case;

And if you exercise the power under section 3L(4) of the *Crimes Act 1914* to secure electronic equipment on the premises, and if you then leave the premises, this warrant authorises a further entry to the premises to allow an expert to operate the equipment, provided that the further entry is made within 24 hours or such further period as may be authorised under that Act.

The offences to which this warrant relates are those specified above in the third condition.

Legal Professional Privilege

NOTE: This warrant is issued in recognition that a claim for legal professional privilege may be made in respect of documents covered by this warrant and on the understanding that, if that occurs, the executing officer will, as far as is reasonably practicable, follow the course of action set out in the document entitled "Claims for Legal Professional Privilege: Premises other than those of a Lawyer, Law Society or Like Institution" a copy of which is attached to this warrant.

NOTE the following:

"Evidential material" is defined in section 3C(1) of the *Crimes Act 1914* to mean:

a thing relevant to an indictable offence or a thing relevant to a summary offence, including such a thing in electronic form.

"Thing relevant to an indictable offence" is defined in section 3(1) of the *Crimes Act 1914* to mean:

- (a) either of the following:
 - (i) anything with respect to which an indictable offence against any law of the Commonwealth or of a Territory has been committed or is suspected, on reasonable grounds, to have been committed;
 - (ii) anything with respect to which a State offence that has a federal aspect, and that is an indictable offence against the law of that State, has been committed or is suspected, on reasonable grounds, to have been committed; or
- (b) anything as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of any such offence; or
- (c) anything as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing any such offence;

"Thing relevant to a summary offence" is defined in section 3(1) of the *Crimes Act 1914* to mean:

- (a) either of the following:
 - (i) anything with respect to which a summary offence against any law of the Commonwealth or of a Territory has been committed or is suspected, on reasonable grounds, to have been committed;
 - (ii) anything with respect to which a State offence that has a federal aspect, and that is a summary or simple offence against the law of that State, has been committed or is suspected, on reasonable grounds, to have been committed; or
- (b) anything as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of any such offence; or
- (c) anything as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing any such offence.

Statement of rights of the occupier

A statement of the rights of the occupier of premises is attached to this warrant.

This warrant may be executed at any time.

The time at which this warrant expires is midnight at the end of the seventh day after the day on which the warrant is issued (or lesser period).

GIVEN under my hand at Queanbeyan

in the State of New South Wales

this 3rd day of June 2019



M Kane

Martin Kane
Registrar

Other person employed in a court who is authorised to issue search warrants.

THIS DOCUMENT HAS BEEN DECLASSIFIED
AND RELEASED IN ACCORDANCE WITH THE
FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)
BY THE AUSTRALIAN FEDERAL POLICE