



**AFP**  
AUSTRALIAN FEDERAL POLICE

Our ref: CRM2020/251

19 December 2019

Mr Steve Smith

By email: [foi+request-5689-e1e72e57@righttoknow.org.au](mailto:foi+request-5689-e1e72e57@righttoknow.org.au)

Dear Mr Smith

**Freedom of information request (CRM2020/251)**

I refer to your application dated 19 November 2019, received on 14 November 2019, seeking internal review in relation to your request for access under the *Freedom of Information Act* 1982.

Your request sought access to:

*All documents relating to official travel of Deputy Commissioner Jabour [sic] for financial year 2018/19. This includes domestic and international.*

On review of the process for dealing with your initial access request, it is evident your request was taken to be withdrawn under section 24AB(6) of the Act when you did not consult the specified contact person or do one of the things required with the 14 day consultation period.

Where a request is withdrawn, either expressly or under a deeming provision (as is the case here), there is no access refusal decision to be made and therefore no reviewable decision. I acknowledge the AFP's letter dated 1 November 2019 was incorrectly expressed as a decision with reference to review rights. I apologise for any inconvenience this may have caused you.

If you want to obtain access to documents relating to former Deputy Commissioner Jabbour's travel, your best pathway from here would be to make a fresh FOI request that addresses the practical refusal concerns the AFP has outlined. I also provide the following comments about the scope of the requested documents to assist you to formulate a further request that avoids a practical refusal reason from arising.

Practical refusal reason

The scope of your request extended much more broadly than 17 flight itineraries for the one year period specified.

To identify the full extent of documents within the scope of your request, searches would need to extend to:

- all emails and calendar entries for Mr Jabbour and his executive assistant during only 2018/19 and the period before this to find documents related to any travel;
- arrangements being planned for the specified period;
- all official diaries for Mr Jabbour for the specified period; and
- a physical search of any other hard copy and electronic files that might be relevant to travel.

In deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities:

- identifying, locating or collating documents within the filing system of the agency or minister;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;
- making copies of documents; and
- notifying an interim or final decision to the applicant.

Other matters that the Australian Information Commissioner has considered relevant in deciding if a practical refusal reason exists include:

- the impact that processing a request may have on the work in an agency, including FOI processing;
- whether an applicant has cooperating in framing a request to reduce the processing workload; and
- whether there is a significant public interest in the documents requested.

As has been publicly reported, Mr Jabbour is no longer an AFP employee. This will impact the nature and extent of resources required to locate documents that may be potentially relevant to the request. Identifying the full extent of documents relating to Mr Jabbour's official travel for the whole period would require significant resources from the AFP across a number of teams.

Your request was not confined to flight itineraries or booked accommodation, neither was it confined to documents held on any systems or files for official travel. Any travel for a work engagement is therefore relevantly caught and could include any mode of transport to an AFP engagement, such as a taxi or Uber.

The request was also not confined to particular search terms, areas or individuals. Where travel was undertaken with any other AFP employees, searches for any records held by such individuals would also be required. The request would also include records after the time Mr Jabbour was stood down in March 2019 - travel he was to attend would have needed to be cancelled or postponed pending the outcome of relevant investigations, and alternative arrangements for representation made.

In these circumstances, the impact on the AFP's FOI team and other areas in the AFP is substantial. The extent of searches and potentially relevant documents is disproportionate to any public interest in release of documents that might result. You did not engage meaningfully with the AFP in response to the initial, informal scope consultation or at all in response to the request consultation process. In these circumstances, the resources required to process the request are not just substantial, but also unreasonable.

Right to complain under Part VIIB of the Act

Section 70 of the Act provides that a person may complain to the Information Commissioner about action taken by the AFP 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. 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.

You can access information about how to make an FOI complaint to the Office of the Australian Information Commissioner on the OAIC website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

Yours sincerely



Shelley Miller  
A/Deputy General Counsel (Coordinator)  
Information Law  
Chief Counsel Portfolio

