

Our ref: 2020/366

1/January 2020

Mr Steve Smith

By email: foi+request-5920-63767e1b@righttoknow.org.au

Dear Mr Smith

### Freedom of Information request

I refer to your application dated 19 November 2019, under the Freedom of Information Act 1982 (the Act) seeking access to:

"All documents relating to the appointment of John Lawler by Commissioner Kershaw to review certain aspects of the AFP. These include messages between the Commissioner and Mr Lawler.

As part of this request any documents relating to the remuneration of Mr Lawler are also requested."

My decision and statement of reasons for that decision is at Annexure A. A schedule of documents identified as falling within the scope of your request is at Annexure B.

#### Disclosure Log

I have decided to publish the documents in part in respect of your request. Publication of the documents will be made to the Disclosure Log on the AFP website at <a href="https://www.afp.gov.au/about-us/information-publication-scheme/routinely-requested-information-and-disclosure-log">https://www.afp.gov.au/about-us/information-publication-scheme/routinely-requested-information-and-disclosure-log</a> in accordance with timeframes stipulated in section 11C of the Act.

Yours singerely

Shelley Miller

Acting Deputy General Counsel Freedom of Information and Information Law Chief Counsel Portfolio

### STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY Steve Smith, Right to Know

I, Shelley Miller, Acting Deputy General Counsel, Freedom of Information and Information Law, 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 19 November 2019, this office received your application in which you requested:

"All documents relating to the appointment of John Lawler by Commissioner Kershaw to review certain aspects of the AFP. These include messages between the Commissioner and Mr Lawler.

As part of this request any documents relating to the remuneration of Mr Lawler are also requested."

On 2 December 2019 you were notified of the requirement to consult a third party pursuant to section 15(6) of the Act.

#### **SEARCHES**

In relation to this request, a search was undertaken by the Lawler Review team and the Commissioner's office for documents relevant to the request.

#### **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 53 documents relevant to your request. The schedule of documents detailing my decision in relation to each document (Schedule) is at Annexure B.

I have decided that:

- documents are released to you in their entirety;
- documents are released in part with deletions pursuant to sections 22(1)(a)(ii), 47E(d), 47F and 47G of the Act; and
- documents are exempt in full pursuant to sections 47F and 47G of the Act.

My reasons for this decision are set out below.

#### **REASONS FOR DECISION**

Folios to which section 22(1)(a)(ii) applies:

Section 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. This information refers to other issues which are not mentioned in your FOI application or is information you agreed to exclude from the scope of your request. In accordance with our acknowledgement letter dated 20 November 2019 you agreed to exclude the names of AFP members, other than the Senior Executive, and direct telephone numbers, signatures and mobile telephone numbers of AFP members.

Accordingly, I find that those parts of the documents would reasonably be regarded as irrelevant to the request under section 22(1)(a)(ii) of the Act.

### Folios to which section 47E(d) applies:

Section 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 – specifically, its ability to assess and manage risks in relation to its expected functions as a law enforcement agency.

In addition, the information redacted under this section of the Act reveals internal operational AFP email addresses and contact details. These contact details are not widely known and to disclose this information would impact on the AFP's day to day operations by resulting in the diversion of AFP resources to responding to unsolicited correspondence received through those points of contact.

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 consider 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 consider that the following are relevant:

- (c) the need for the agency to maintain confidentiality with regard to the subject matter and the circumstances in which the information was obtained and collated, particularly so far as this relates to proper and efficient procedures involved in assessing and evaluating information; and
- (d) that if information concerning internal contact details were revealed, it may have a substantial adverse effect on the conduct of AFP operations in the future; and
- (e) if such information was disclosed, it would divert AFP resources from the proper conduct of their expected operations.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (c) to (e) above and conclude that on balance, disclosure is not in the public interest.

Accordingly, I find those documents or parts of documents are exempt under s47E(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 details including contact and address details together with family information.

I have taken into account the factors at section 47F(2), including:

- (a) the extent to which the information is well known;
- (b) 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;
- (c) the availability of the information from publicly accessible sources;
- (d) the current relevance of the information; and
- the circumstances in which the information was obtained and any expectation of confidentiality.

I find release of this personal information to be unreasonable on the grounds that it contains personal information that is not well known or in the public domain. This information remains current. It was also obtained as part of an engagement process for services where there is an expectation of confidentiality.

I have also 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 consider the general public interest in access to documents as expressed in sections 3 and 11 of the Act is relevant.

In relation to the factors against disclosure, I consider the fact that is particularly relevant is the prejudice to the protection of an individual's right to privacy.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to the factors against disclosure above, and conclude that on balance, disclosure is not in the public interest. Accordingly, I find the documents or parts of documents are exempt under section 47F of the Act.

### Folios to which section 47G applies:

Section 47G of the Act provides that:

- "(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
  - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency."

The parts of the documents identified in the Schedule as exempt under this section of the Act contain information which relates to the business affairs of a private organisation. It is considered that this private organisation would be unreasonably affected by the disclosure of the information as it directly relates to their business and commercial affairs.

In relation to the factors favouring disclosure, I consider the following are relevant:

- 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 consider that the following are relevant:

- disclosure would adversely affect the commercial value of the private organisation as it would reveal the methods in which they manage their business, commercial affairs and private clientele;
- (d) disclosure would prejudice the expectation of confidentiality of the information, in particular the commercial value of the private organisation and the personal information of its clientele; and
- (e) disclosure would adversely affect the future commercial earnings of the private organisation if information obtained confidentially was disclosed, and inhibit the organisation's future ability to acquire and maintain a clientele base.

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) to (e) against disclosure outweigh the factors in favour of disclosure. I find the documents or parts of the documents are exempt under section 47G of the Act.

### EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

In reaching my decision, I have relied on the following:

- 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 third parties;
- 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 IN 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 either for internal review of the decision, or for a review by the Information Commissioner (IC). You do not have to apply for internal review before seeking review by the IC.

For complaints about the AFP's actions in processing your request, you do not need to seek review by either the AFP or the IC in making your complaint.

#### **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 internal review in writing to the 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 reviewing the file 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 submission for review must be made within 30 days. Applications 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

Alternatively, section 54L of the Act gives you the right to apply directly to the IC for review, including after 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 assist if you set out the reasons for review in your application.

Section 54S of the Act provides the relevant timeframes. For an access refusal decision covered by section 54L(2), the application must be made within 60 days. For an access grant decision covered by section 54M(2), the application must be made within 30 days.

Applications for review by the IC should be addressed to:

Office of the Australian Information Commissioner 'GPO Box 5128
Sydney NSW 2001

Further, the OAIC encourages parties to 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 this process can be found in Part 10 of the Guidelines which are available on the OAIC's website at <a href="http://www.oaic.gov.au/publications/guidelines.html">http://www.oaic.gov.au/publications/guidelines.html</a>.

#### 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. 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.

The IC may be contacted on 1300 363 992.

# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

Document	Folio #	Description	Exemption
-		·	<b>s22(1)(a)(ii)</b> Exempted material would disclose information that would reasonably be regarded as irrelevant to the request.
1	1	s22(1)(a)(ii)	
2	t	d	
			s47G(1)(a) Deletions are made on the grounds that disclosure would reasonably be expected to affect that person adversely in respect of his or her lawful business or professional affairs. Acress must be given unless it would be contrary to the public
		0	interest,
	7	s22(1)(a)(ii)	
		s47G	
	ო	s22(1)(a)(ii)	
2	4	s22(1)(a)(ii)	
			s47E(d) Exempted material would disclose information that would have a substantial
			adverse effect official proper and efficient conduct of the operations of the AFF and would be contrary to the public interest. Access must be given unless it would be
			contrary to the public interest.
		s47E(d)	
3	9	s22(1)(a)(ii)	
	7	s22(1)(a)(ii)	
4	Ø	s22(1)(a)(ii)	
		s47E(d)	
	6	s22(1)(a)(ii)	
		s47E(d)	
	10	s22(1)(a)(ii)	
	11	s22(1)(a)(ii)	
		s47E(d)	
5	12	s22(1)(a)(ii)	
		s47E(d)	
	13	s22(1)(a)(ii)	
		s47E(d)	
	14	s22(1)(a)(ii)	

# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

s47E(d) s22(1)(a)(ii) s22(1)(a)(ii) s22(1)(a)(ii) s22(1)(a)(ii) s22(1)(a)(ii) s22(1)(a)(ii) s47E s22(1)(a)(ii) s47E s22(1)(a)(ii) s47E(d) s22(1)(a)(ii)	Post in the second	# 0:101	10:000	
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118 118 119 21 21 24 26 26 27 28 28 29 30 31 31 33			s47F	
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# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

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Document	FOIIO #	Description	Exemption
		S47F	
	34	s22(1)(a)(ii)	
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12	36	s22(1)(a)(ii)	
	37	s22(1)(a)(ii)	
		s47F	
	38	s22(1)(a)(ii)	
		S47F	
	39	s22(1)(a)(ii)	
		S47F	
13	40-62	Release in full	
14	63	s22(1)(a)(ii)	
		s47E(d)	
	64	s22(1)(a)(ii)	
		S47F	
	9	s22(1)(a)(ii)	
		S47F	
15	99	s22(1)(a)(ii)	
	67	s22(1)(a)(ii)	
		S47F	
	89	s22(1)(a)(ii)	
		s47F	
16	69	s22(1)(a)(ii)	
	70	s22(1)(a)(ii)	
		S47F	
	71	s22(1)(a)(ii)	
		S47F	
17	72	s22(1)(a)(ii)	
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	73	s22(1)(a)(ii)	
18	74	s22(1)(a)(ii)	
	75	s22(1)(a)(ii)	
		s47F	

# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

Document	Folio #	Description	Exemption
19	26	s22(1)(a)(ii)	
		S47F	
	77	s22(1)(a)(ii)	
20	78	s47G	
	79	s22(1)(a)(ii)	
	84	s47G	
×	85	s22(1)(a)(ii)	
		s47G	
	98	s47G	
	86	s22(1)(a)(ii)	
	101	S47F	
	102	s22(1)(a)(ii)	
	105-106	Exempt in full:	
	0.60	s47F	
21	107	s22(1)(a)(ii)	
		s47E(d)	
		S47F	
	108	s47G	
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# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

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	140	s22(1)(a)(ii)	
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	141	s47G	
	147	S47F	
	148	s47F	
	149	S47F	
	150	S47F	
	151	s47F	
	152	s47F	
	153	s22(1)(a)(ii)	
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į.	158	s47F	
	159	s47F	
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	160-161	s47F	
25	162	s22(1)(a)(ii)	
	163	s22(1)(a)(ii)	
	164	s22(1)(a)(ii)	
	165	s22(1)(a)(ii)	
	166	s22(1)(a)(ii)	
26	167	s22(1)(a)(ii)	
	168	s22(1)(a)(ii)	
	169	s22(1)(a)(ii)	
27	171	s47G	
	174	s22(1)(a)(ii)	
	175	s22(1)(a)(ii)	
	177	s47G	
28	178-183	s22(1)(a)(ii)	Some folios released in full

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29	184	s22(1)(a)(ii)	
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*	187	s22(1)(a)(ii)	
30	188	s22(1)(a)(ii)	
×.	189	s22(1)(a)(ii)	
	190	s22(1)(a)(ii)	
		Exempt in full:	
	191-192	s47F	
	195	s47G	
	201	s47G	
	202	s22(1)(a)(ii)	
	203	s47G	
31	222	s22(1)(a)(ii)	
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	224	s22(1)(a)(ii)	
	225	s22(1)(a)(ii)	
32	226	s47G	
	227	s22(1)(a)(ii)	
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# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

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	233	Folio exempt	
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	237	s47E(d)	
		Folio exempt	
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	238	s47E(d)	
	239	Folio exempt	
		in full:	
		s47E(d)	
		Folio exempt	
		in full:	
	240	S4/E(d)	
		Folio exempt	
		in full:	
	241	s47E(d)	
		Folio exempt	
		in full:	
	242	s47E(d)	
		Folio exempt	
		in full:	
	243	s47E(d)	

# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

	;	,	
Document	Folio #	Description	Exemption
	244	Folio exempt	
		in full:	
		347 L(u)	
	245	Folio exempt	
		In full: s47F(d)	
	246	Folio exempt	
		in full:	
		s47E(d)	
	247	Folio exempt	
34		in full: s47F	
	248	Folio exempt	
		in full: s47F	
	249	Folio exempt	
		in full: s47F	
	250	Folio exempt	
		in full: s47F	
	251	Folio exempt	
		in full: s47F	
,	252	Folio exempt	
		in full: s47F	
	253	Folio exempt	
		In full: S4/F	
	254	Folio exempt	
		in full: s47F	
•	255	Folio exempt	
	×	in full: s47F	
ě,	256	Folio exempt	
		in full: s47F	
	257	Folio exempt	
		in full: s47F	
,,	258	Folio exempt	
		וומון פילוני	

# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

	# 0:101	Docementon	\$ C.
Document	# 01101	Description	Exemption
	259	Folio exempt in full: s47F	
	260	Folio exempt in full: s47F	
D	261	Folio exempt in full: s47F	
	262	Folio exempt in full: s47F	
	263	Folio exempt in full: s47F	
	264	Folio exempt in full: s47F	
	265	Folio exempt in full: s47F	
	266	Folio exempt in full: s47F	
	267	Folio exempt in full: s47F	
35	268	s22(1)(a)(ii)	
		s47E(d)	
	270	Folio exempt in full:	
	271	Folio exempt in full:	
	272	Folio exempt in full:	
	273	Folio exempt in full: s47E(d)	

# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

Dogwood	# OILO	10000	10 in
Document	# 01101	Describuon	EACHIDGOL
	274	Folio exempt	
		in full:	
		s47E(d)	
	275	Folio exempt	
		in full:	
1		s47E(d)	
	276	Folio exempt	
		in full:	
		s47E(d)	
	¥	Folio exempt	
		in full:	
	277	s47E(d)	
		Folio exempt	
		in full:	
	278	s47E(d)	
36	279	s47G	
	280	s47G	
	281	S47F	
	282	s22(1)(a)(ii)	
		s47G	
37	283	s22(1)(a)(ii)	
		s47E(d)	
	284	s22(1)(a)(ii)	
38	285	s22(1)(a)(ii)	
		s47E(d)	
	286	s22(1)(a)(ii)	
		s47E(d)	
	287	s22(1)(a)(ii)	
		s47E(d)	
39	288	s47G	
4	289	s47G	
	290	s47F	
	291	s22(1)(a)(ii)	
		s47G	

# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

1	Eolio #	1	1
Document	# OIIO #	Describuni	Exemption
	293	s47G	
	296	s22(1)(a)(ii)	
	297	s22(1)(a)(ii)	
	298	s22(1)(a)(ii)	
	299	s22(1)(a)(ii)	
		s47G	
,	302	s47E(d)	
	304	s22(1)(a)(ii)	
40	306	s22(1)(a)(ii)	
		s47F	
		Folio exempt	
	1	in full: s4/F	
41	307	s22(1)(a)(ii)	
		s47F	
	308	s22(1)(a)(ii)	
42	309	s22(1)(a)(ii)	
		s47F	
	310	s47F	
	311	s47G	
		Folio exempt	
43	312	in full: s47F	
44	313	s22(1)(a)(ii)	
45	314	s22(1)(a)(ii)	
	315	s22(1)(a)(ii)	
	316	s22(1)(a)(ii)	
46	317	s22(1)(a)(ii)	
3	319	s47G	
	322	s22(1)(a)(ii)	
	323	s22(1)(a)(ii)	
	325	s47G	
	328	s47E(d)	
Π.	330	s22(1)(a)(ii)	
47	332	s22(1)(a)(ii)	

# SCHEDULE OF DECISION – CRM 2020/366 – STEVE SMITH

	T-II- II		1
Document	# 0110	Description	Exemption
	333	s22(1)(a)(ii)	
48	334	s22(1)(a)(ii)	
	335	s22(1)(a)(ii)	
49	336	s22(1)(a)(ii)	
	337	s22(1)(a)(ii)	
	338	s22(1)(a)(ii)	
	340	s47E(d)	
	341	s47F	
	342	s47G	
	343	s47E(d)	
	345	s22(1)(a)(ii)	
	346	s22(1)(a)(ii)	
	347	s22(1)(a)(ii)	
	348	s47G	
	351	s47E(d)	
	353	s22(1)(a)(ii)	
50	355	s22(1)(a)(ii)	
	356	s22(1)(a)(ii)	
	357	s22(1)(a)(ii)	
51	358	s22(1)(a)(ii)	
	359	s22(1)(a)(ii)	
	360	s22(1)(a)(ii)	
	361	s22(1)(a)(ii)	
52	362	s22(1)(a)(ii)	
53	363	s22(1)(a)(ii)	
	364	s22(1)(a)(ii)	
	365	s22(1)(a)(ii)	
	366	s22(1)(a)(ii)	
			Folios not itemised are released in full