



AFP
AUSTRALIAN FEDERAL POLICE

Our ref: CRM 2020/582

13 July 2020

Mr Justin Warren

By email: foi+request-6191-8e966724@righttoknow.org.au

Dear Mr Warren

Freedom of Information request

I refer to your application dated 28 February 2020 under *the Freedom of Information Act 1982* (the Act).

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.

I have 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 <https://www.afp.gov.au/about-us/information-publication-scheme/routinely-requested-information-and-disclosure-log> in accordance with timeframes stipulated in section 11C of the Act.

Yours sincerely

Shelley Miller
A/Deputy General Counsel
Freedom of Information and Information Law
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
JUSTIN WARREN**

I, Shelley Miller, A/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 28 February 2020, this office received your request seeking access to:

"I request a copy of all emails sent to Australian Federal Police email addresses from the Clearview.AI company between 1 Jan 2019 and 28 Feb 2020, inclusive.

I also request a copy of all documents that constitute the AFP acceptable usage policy for AFP's email system and any systems or technologies officers may use to access AFP email accounts. I request only the final, published version(s) of these documents that officers would have been expected to comply with during the period 1 Jan 2019 and 28 Feb 2020.

This article <https://www.buzzfeed.com/hannahryan/clearview-ai-australia-police> suggests that more than five people associated with AFP have created accounts with Clearview.AI and that "Law enforcement officers are able to sign up for a free trial with Clearview using their official government email addresses. It is not available to the general public."

When the AFP acknowledged receipt of your FOI request, you were informed that, unless you objected, the AFP would treat particular information as irrelevant to the scope of the request. On 2 March 2020, you advised that you objected to the following information being considered irrelevant:

- names of AFP members, other than the Senior Executive;
- direct telephone numbers, signatures and mobile telephone numbers of AFP members; and
- duplicate documents, including duplicate emails.

On 24 March 2020, you agreed to extend the time for processing your request by 30 days pursuant to section 15AA of the Act.

On 24 April 2020, you were notified of the requirement to consult a third party and further extend the time for processing your request pursuant to subsection 15(6) of the Act.

On 9 June 2020, the Office of the Australian Information Commissioner (OAIC) issued a notice under section 55E of the Act requiring the AFP to provide a statement of reasons to you by 30 June 2020.

On 22 June 2020, the AFP sought an extension of time to notify you of a decision by 13 July 2020.

SEARCHES

Searches for documents were undertaken by involved officers, including those in Operational, Science and Technology (OT&I) and the Australian Centre to Counter Child Exploitation (ACCCE).

WAIVER OF CHARGES

Given 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 30 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 to:

- release 29 documents with deletions pursuant to sections 7(2), 22(1)(a)(ii), 47B and 47E(d) of the Act; and
- exempt 1 document in full pursuant to section 47G of the Act.

My reasons for this decision are set out below.

REASONS FOR DECISION

Folios to which subsection 7(2) applies:

Subsection 7(2) of the Act provides that:

“(2) The persons, bodies and Departments specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.”

The parts of documents identified as exempt under subsection 7(2) of the Act contain material which is determined to be exempt from the operations of the Act because it relates to agencies specified in Part II of Schedule 2 of the Act.

Accordingly, I find parts of the documents are exempt under subsection 7(2) of the Act.

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 marked with deletions under this section of the Act contain information which is considered irrelevant to the request. This information is irrelevant because it refers to other matters which are not mentioned in your FOI request. Accordingly, I find parts of the documents contain material irrelevant to the request under subsection 22(1)(a)(ii) 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 as exempt under this section of the Act contain information provided by a State agency to the AFP for law enforcement purposes.

I am satisfied the disclosure of this information could reasonably be expected to damage the relations between the AFP and the state agency by causing a loss of trust and confidence in the AFP and inhibiting the future flow of information between the State agency and the AFP.

I am also satisfied the disclosure of this information could reasonably be expected to disclose information or matters communicated in confidence by the State agency to the AFP. There is a general understanding that communications of this nature are treated in confidence.

Therefore, I find parts of the documents are conditionally exempt under section 47B of the Act. However, I must give access to the folios unless, in the circumstances, access at this time would on balance be contrary to the public interest.

I consider the factors favouring disclosure are:

- (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.

I consider the factors against disclosure are:

- (c) disclosure of the information could reasonably be expected to inhibit the future supply of information from a State agency to the AFP;
- (d) prejudice to the AFP's ability to obtain confidential information in the future; and
- (e) prejudice to the AFP's ability to obtain similar information in the future.

I find the factors against disclosure outweigh the factors in favour of disclosure. The release of the documents would make only a minimal (if any) contribution to the government accountability. On the other hand, the AFP relies heavily on cooperation with State agencies

in order to carry out its law enforcement functions. For that reason, disclosure of the information would be contrary to the public interest.

Accordingly, I find parts of the documents are exempt under section 47B of the Act.

Folios to which subsection 47E(d) applies:

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 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, including security classifications and the names, email addresses, signatures and other identifying information about AFP members.

I consider disclosure of this information could reasonably be expected to prejudice the AFP's operations by revealing information about the AFP's security framework that would assist individuals to identify and penetrate security measures.

I find this adverse effect to be serious and not insubstantial. Further, public release of AFP member information (particularly those engaged in covert activity) would expose the AFP to distracting external enquiries and possible harassing or vexatious communication from the AFP's established communication channels. This activity adversely impacts the AFP's day to day operational resulting in the diversion of AFP resources to respond to unsolicited correspondence received through these points of contact.

Therefore, I find parts of the documents are conditionally exempt under section 47E(d) of the Act. However, I must give access to the folios unless, in the circumstances, access at this time would on balance be contrary to the public interest.

I consider the factors favouring disclosure are:

- (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.

I consider the factors against disclosure are:

- (c) disclosure of operational information could reasonably be expected to undermine the AFP's procedures;
- (d) prejudice to security and law enforcement;
- (e) disclosure of internal contact details could reasonably be expected to have a substantial adverse effect on the conduct of AFP operations in the future; and
- (f) disclosure of internal contact details could reasonably be expected to divert AFP resources from the proper conduct of their expected operations.

I find the factors against disclosure outweigh the factors in favour of disclosure. I am satisfied the risks to the AFP's operations and procedures are disproportionate to the public interest in providing you with access to this information. For that reason, disclosure of the information would be contrary to the public interest.

Accordingly, I find parts of the documents are exempt under section 47E(d) 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 document and parts of other documents identified as exempt under this section of the Act contain information which relates to the business affairs of a private organisation, including pricing and contact information. I am satisfied the disclosure of this information would unreasonably affect that private organisation as it directly relates to their business and commercial affairs.

Therefore, I find a document and parts of other documents are conditionally exempt under section 47G of the Act. However, I must give access to the folios unless, in the circumstances, access at this time would on balance be contrary to the public interest.

I consider the factors favouring disclosure are:

- (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.

I consider the factor against disclosure is the prejudice to the future commercial earnings and competitive advantage of the private organisation. I am satisfied this risk is disproportionate to the public interest in providing you with access to the information. For that reason, disclosure of the information would be contrary to the public interest.

Accordingly, I find a document and parts of other 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 terms of your request;
- ❖ the contents of the documents relevant to the request;
- ❖ advice from AFP officers with responsibility for matters relating to the documents to which you sought access;
- ❖ consultation responses;
- ❖ *Freedom of Information Act 1982*; and
- ❖ guidelines issued by the OAIC.

*****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 internal review submission 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, 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 assist if you set out the reasons for review in your application.

Section 54S of the Act provides 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 IC review should be addressed to:

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

Further, the IC 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 this process can be found in Part 10 of the Guidelines which are available on the IC's 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. 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 2020/582 – JUSTIN WARREN

Document	Folio #	Description	Exemption
1	1	s47E(d)	s47E(d) Disclosure 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.
	4	s47E(d)	
	6	s47E(d)	
	20	s47E(d)	
		s7(2)	s7(2) Entities specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.
	24	s47E(d)	
		s7(2)	
2	29	s47E(d)	
		s47B	s47B Disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.
3	30	s47E(d)	
4	31	s47E(d)	
5	32	s47E(d)	
6	33	s47E(d), s47G	
7	34	s47E(d), s47G	
8	36	s47E(d)	
9	37	s47E(d)	
10	38	s47E(d)	
11	39	s47E(d)	
12	40	s47E(d)	
13	41	s47E(d)	
14	42	s47E(d), s47G	

ANNEXURE B

Document	Folio #	Description	Exemption
15	43	Folio exempt in full: s47G	s47G Disclosure would reasonably be expected to affect the commercial or financial affairs of an organisation or undertaking and would be contrary to the public interest.
	44	Folio exempt in full: s47G	
	45	Folio exempt in full: s47G	
	46	Folio exempt in full: s47G	
	47	Folio exempt in full: s47G	
	48	Folio exempt in full: s47G	
	49	Folio exempt in full: s47G	
	50	Folio exempt in full: s47G	
	51	Folio exempt in full: s47G	
	52	Folio exempt in full: s47G	
	53	Folio exempt in full: s47G	
	54	Folio exempt in full: s47G	
	55	Folio exempt in full: s47G	
	56	Folio exempt in full: s47G	
	57	Folio exempt in full: s47G	
	58	Folio exempt in full: s47G	
	59	Folio exempt in full: s47G	
	60	Folio exempt in full: s47G	
	61	Folio exempt in full: s47G	
	62	Folio exempt in full: s47G	
	63	Folio exempt in full: s47G	
16	64	s47E(d)	
17	65	s47E(d)	
18	66	s47E(d)	
19	67	s47E(d)	
20	68	s47E(d)	
21	69	s47E(d)	

ANNEXURE B

Document	Folio #	Description	Exemption
22	70	s47E(d)	
23	71	s47E(d)	
24	72	s47E(d)	
25	73	s47E(d)	
26	74	s47E(d)	
		s22(1)(a)(ii)	s22(1)(a)(ii) Information that would reasonably be regarded as irrelevant to the request.
	75	s47E(d)	
		s22(1)(a)(ii)	
	76	s22(1)(a)(ii)	
27	77	s47E(d)	
28	78	s47E(d)	
29	79	s47E(d)	
		s47B	
30	80	s47E(d)	
			Pages released in full are not itemised.

