



INFORMATION ACCESS (FREEDOM OF INFORMATION)

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Our ref: 2015/24

14 October 2014

Mr Ben Fairless
Foi+request-675-ed8c5da2@righttoknow.org.au

Dear Mr Fairless,

Freedom of Information request regarding SEDNode User Guides

I refer to your application dated 12 July 2014 under the *Freedom of Information Act 1982* (the Act) seeking the following:

"access to the most recent document created detailing how to use SEDnode. This would likely be a user guide for SEDnode."

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.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Ellery', is written over a horizontal line.

Jacqueline Ellery
A/Coordinator
Information Access (Freedom of Information)
Policy and Governance

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
MR BEN FAIRLESS**

I, Jacqueline Ellery, A/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 July 2014 this office received your application in which you requested:

"access to the most recent document created detailing how to use SEDnode. This would likely be a user guide for SEDnode."

On 27 August 2014 a further extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AC of the Act.

SEARCHES

In relation to this request, a search of all records held by AFP Intelligence, High Tech Crime Operations and the AFP Operations Coordination Centre was undertaken.

DECISION

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

Some of the documents that relate to your request are released with deletions pursuant to subsections 22(1)(a)(ii), 33(a)(i), 37(2)(b), 47(E)(d) and 47G(a) of the Act.

My reasons for this decision are set out below.

WAIVER OF CHARGES

Further, given that the request has totalled only 30 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.

REASONS FOR DECISION

I find that some of the documents relevant to your request are partially exempt under the provisions of the Act, as set out in the Schedule, for the reasons outlined below.

Folios to which subsection 22(1)(a)(ii) apply:

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 documents or parts of documents identified in the Schedule as exempt 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 should be deemed to be exempt because it does not come within the scope of your application and thus falls outside the ambit of your request. By way of further explanation, these exempt folios cover information which refers to other issues which are not mentioned in your FOI application.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 22(1)(a)(ii) of the Act.

Folios to which subsection 33(a)(i) apply:

Subsection 33(a)(i) of the Act provides that:

- "A document is an exempt document if disclosure of the document under this Act:*
- (a) *would, or could reasonably be expected to, cause damage to:*
 - (i) *the security of the Commonwealth*

The documents identified within the schedule as exempt under this section of the Act relate to information regarding the security of the Commonwealth. The information within these documents outlines methods utilised by the AFP to lawfully prevent, detect and investigate Commonwealth offences. On this basis, I am satisfied that disclosure of this information would, or could reasonably be expected to cause damage to the security of the Commonwealth; exposing police methodology for the investigation of matters that affect the protection of Australia and its population from hostile activities which are subversive of Commonwealth interests.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 33(a)(i) of the Act.

Folios to which subsection 37(2)(b) apply:

Subsection 37(2)(b) of the Act provides that:

"(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- ...
- (b) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;"*

The documents identified in the Schedule as exempt under this section of the Act contain information that would disclose methods and procedures used by the AFP in investigations of breaches of the law. Disclosure of this information would be reasonably likely to prejudice the effectiveness of those methods and procedures as these methods and procedures are not generally known to the public.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 37(2)(b) of the Act.

Folios to which subsection 47E(d) apply:

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 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 operational functions in ensuring public safety.

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 FOI 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 believe that the following are relevant:

- (c) the need for the agency to maintain the confidentiality with regard to the subject matter and the circumstances in which the information was obtained and handled;

- (d) that if information concerning the operation was revealed, it may have a substantial adverse effect on the conduct of similar operations in the future; and
- (e) if such information was disclosed, it may prejudice security, law enforcement and public safety.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (c), (d) and (e) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure public safety during police operations and the effectiveness of current procedures. I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 47E(d) of the Act.

Folios to which subsection 47G apply:

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 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. It is also considered that the AFP would be unreasonably affected by the disclosure of the information as it would jeopardise the future supply of information from that private organisation.

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 FOI 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 believe that the following are relevant:

- (c) 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. These processes may be private to them and disclosure would be unreasonable;
- (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. The confidentiality would be an inherent expectation of the organisation's clientele and any breach of which could adversely affect the organisation by exposing it to civil claims and liability.
- (e) disclosure would also adversely affect the future commercial earnings of the private organisation if information obtained confidentially was disclosed. Such disclosure could inhibit the organisation's future ability to acquire and maintain a clientele base.
- (f) disclosure would prejudice the future supply of information to the AFP for the purposes of the administration of a law and in particular for the purposes of an investigation. Disclosure of the information would compromise the relationship between the AFP and that private organisation which in turn would prejudice the AFP's ability to effectively carry out its operations as a policing agency.
- (g) disclosure would also deter the private organisation from assisting the AFP in any future investigations as the expectation of providing that information confidentially would be compromised.

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 (g) against disclosure outweigh the factors in favour of disclosure. I find that release of the documents or parts of the documents would be an unreasonable disclosure under section 47G 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*;
- ❖ Guidelines issued by the Department of Prime Minister and Cabinet; 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:

Information Access (FOI)
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 2999
Canberra ACT 2601

On 13 May 2014, as part of the 2014-15 Federal Budget, the Government announced that the OAIC would be abolished effective from 31 December 2014. For details on how this will affect the processing of IC review applications, visit www.oaic.gov.au/info-on-oiac-shut-down-and-foi-reviews-and-complaints.

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.

Further information about the process for IC review 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.