



AFP
AUSTRALIAN FEDERAL POLICE

Our ref: CRM2022/796

4 August 2021

Mr Philip Sweeney

By email: foi+request-7547-5718472c@righttoknow.org.au

Dear Mr Sweeney

Freedom of Information request CRM2022/796

I refer to your request dated 13 July 2021, made 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.

Yours sincerely

Natalie Woodberry
Senior Lawyer and Acting Team Leader
Freedom of Information and Information Law
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
PHILIP SWEENEY**

I, Natalie Woodberry, Senior Lawyer and Acting Team Leader, 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 (AFP).

What follows is my decision and reasons for the decision in relation to your request.

BACKGROUND

On 13 July 2021, the AFP received your request in the following terms:

“The documents I seek are copies of any correspondence from the new ASIC Chairman, Joseph Longo, and the AFP Commissioner, Reece Kershaw. The search period is from 1 June 2021 until the date the AFP respond to this FOI Request.”

The scope of your request has been interpreted as being for correspondence between ASIC Chairman, Joseph Long, and AFP Commissioner, Reece Kershaw, between 1 June 2021 and the date of your FOI request – noting, documents can only be requested up until the date of receipt of your request by the AFP.

SEARCHES

Searches for documents were undertaken by the Office of the Commissioner and included but were not limited to:

- a) a search of the email inboxes of Commissioner Kershaw, the Office of the Commissioner, and the inbox of the Commissioner’s Executive Assistant;
- b) a search of the Commissioner’s correspondence folder;
- c) a search of the Commissioner’s correspondence register; and
- d) a search of the AFP’s Parliamentary Document Management System (PDMS).

On the basis of the above searches, I consider that all places where documents might be held were searched and the search terms were comprehensive enough to locate any relevant document.

Accordingly, apart from the file made up for your FOI request, I understand no documents relating to your request have been located in the possession of the AFP. I am satisfied all reasonable searches have been conducted and the AFP does not hold documents responsive to your request.

For that reason, your request for access is refused under section 24A(b)(ii) of the Act. Section 24A states:

- “An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency’s or Minister’s possession but cannot be found; or
 - (ii) does not exist.”

*****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 AFP, 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 54 of the FOI Act gives you the right to apply for internal review of this decision. No particular form is required to make an application for internal review, however, an application needs to be made in writing within 30 days of this decision. 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 the decision should be reviewed.

Section 54B of the FOI Act provides that the internal review submission must be made within 30 days. Applications may be sent by email (foi@afp.gov.au) or 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 FOI Act gives you the right to apply directly to the IC for review of this decision. 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.

Section 54S of the FOI Act provides the timeframes for an IC review submission. 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 IC review may be lodged by email (foidr@oaic.gov.au), using the OAIC's online application form (available at www.oaic.gov.au) or addressed to:

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

The IC encourages parties to an IC review to resolve their dispute informally, and to consider possible compromises or alternative solutions to the dispute in this matter. The AFP would be pleased to assist you in this regard.

Complaint

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can make a complaint to the IC. A complaint may be lodged using the same methods identified above. It would assist if you set out the action you consider should be investigation and your reasons or grounds.

More information about IC reviews and complaints is available on the OAIC's website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.