



AFP
AUSTRALIAN FEDERAL POLICE

Our ref: CRM2022-1181 (LEX 763)

6 June 2022

Me

By email: foi+request-8858-015fae63@righttoknow.org.au

Attention: Me

Freedom of Information request

I refer to your request dated 5 May 2022 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.

I have decided to publish the documents in part. Publication of the 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

Callum Hill
Lawyer and Acting Team Leader
Freedom of Information
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
ME**

I, Callum Hill, Lawyer and Acting Team Leader, Freedom of Information, 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 2 May 2022, the AFP received your request in the following terms:

I request:

- any correspondence

- to or from the AFP and another Commonwealth entity (including but not limited to the Commonwealth Superannuation Corporation)

- sent, received or dated between 1 July 2019 and 30 June 2021 inclusive

- regarding, directly or indirectly, (1) PSSap; and, (2) the requirement, or lack of requirement, for the AFP to tell PSSap members how much superannuation they have been paid as a percentage of their salary

'Correspondence' is construed broadly - any communication for which there is a record. Email, letter, GIFs sent in SES chat groups, messages by carrier pigeon, etc.

Final versions only is acceptable, drafts are not required

If documents you think would satisfy me are easily found, I am open to negotiating the terms of my request to avoid the need for an exhaustive search that provides little of interest

On 11 May 2022 you agreed to revise the scope of your request as follows:

I request:

1. *Final version of emails for the period 1 July 2019 and 30 June 2021 inclusive between AFP Payroll inbox and Commonwealth Superannuation Corporation (CSC) regarding, directly or indirectly:*
 - a. *PSSap; and,*
 - b. *the requirement, or lack of requirement, for the AFP to tell PSSap members how much superannuation they have been paid as a percentage of their salary.*

2. *Final version of letters for the period 1 July 2019 and 30 June 2021 inclusive between AFP People & Culture Command (and relevant Deputy Commissioner) or the AFP Commissioner's Office and CSC regarding, directly or indirectly:*
 - a. *PSSap; and,*
 - b. *the requirement, or lack of requirement, for the AFP to tell PSSap members how much superannuation they have been paid as a percentage of their salary.*

SEARCHES

Searches were undertaken by relevant AFP business areas with responsibility for matters relating to the documents to which you sought access including Chief Financial Officer, People & Culture Command, Office of the Commissioner, Deputy Commissioner of People & Culture, Payroll, and acting Commanders of Chief of Staff during the relevant periods.

EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

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

- the scope of your request;
- the contents of the documents identified as relevant to the request;
- advice from AFP business areas with responsibility for matters contained in the documents;
- consultation with relevant Commonwealth agency;
- the Act; and
- the guidelines issued by the Office of the Australian Information Commissioner ('OAIC') under section 93A of the Act.

DECISION

I have identified one (1) document (i.e. an email chain) responsive to your request.

I have decided to release the document to you in part with deletions pursuant to sections 22(1)(a)(ii) and 47E(c) of the Act.

My reasons for this decision are set out below.

REASONS FOR DECISION

Material 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;"*

Parts of the document contain information which is considered irrelevant to your request (namely, an internal AFP email forwarding the responsive email chain to the FOI team – see top of Folio 1).

Accordingly, I find this part of the document would be reasonably regarded as irrelevant to the request under section 22(1)(a)(ii) of the Act.

Material to which section 47E(c) applies:

Section 47E(c) 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:

- ...
(c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency.”*

The FOI Guidelines at paragraph [6.114] state the following in respect of section 47E(c):

“For this exemption to apply, the documents must relate to either:

- *the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety*
- *the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression (footnotes omitted).”*

Staff names and direct contact information

Parts of the document have been identified as being exempt under section 47E(c). This material contains the names and direct contact information of AFP staff below the level of Senior Executive Service.

The AFP is a key agency responsive for Australia’s National Security Framework. Primary areas of the AFP responsibility include:

- federal policing: protecting Australian’s from the threat of terror attack, investigating and prosecuting large-scale internal drug trafficking and serious organised crime;
- national security: security airports, Parliament, key Commonwealth establishments and keeping Australian and foreign dignitaries safe; and
- international police assistance.

The AFP receives around 800 FOI requests annually and is required by the Act to publish the documents it releases on its disclosure log with limited exceptions. Even if information is not published on the Disclosure Log, the Act does not limit or restrain the further dissemination of that information by applicants or ensure the security of the information in future. The internet allows any person to publish information online, which becomes a permanent record that is available to anyone in the world.

The information I have identified as conditionally exempt could publicly identify staff not only as working for the AFP, but their work location and activities. The permanence of an online footprint means that information online can impact an individual in the future. In that regard, I note that AFP staff typically work across different areas of the agency in their careers and may work in operationally areas with increased risk the future.

Through a specific online picture gained by linking information released under the Act to information that is available online or in public records, now or in the future, those who wish to harm an employee could identify them and potentially approach them in the community. This risk is not far-fetched. In September 2014, Australia's national security threat level was raised to probable, and law enforcement employees have been target of particular planned and actual attacks in Australia. There is therefore a current heightened threat to both operational and non-operational employees of the AFP.

The AFP has a primary duty of care to ensure, so far as reasonably practicable, the health and safety of workers and others who may be affected by the AFP's business or undertaking. Among other things, this duty requires the AFP to take steps to eliminate, or if elimination is not possible, manage risks to the health and safety of AFP personnel while at work. The release of names of AFP personnel, particularly with their contact details, could easily allow for their identities to be ascertained. If staff identities are ascertained, there is not only an immediate risk to their health and safety, but an ongoing risk as once their identity is disclosed to the public, that information cannot be retracted or its further circulation controlled. Therefore, releasing names not only presents an immediate risk to AFP personnel, but the loss of control of the information presents an ongoing risk which undermines the AFP's ability to continue to manage the health and safety of staff.

I consider that release of this information, in response to this request, would therefore have a significant effect on the wellbeing and morale of staff, which, in turn, impacts the AFP's ability to recruit and maintain personnel. Members should be confident that the AFP is taking all possible steps to ensure they are safe from harm as a result of their work, including ensuring that their identity as AFP employees is not released in an unrestricted way. Accordingly, I am of the opinion that to release this information could have a substantial adverse effect on the conduct of management of personnel within the AFP.

However, I must give access to this information unless, in the circumstances, access at this time would be contrary to the public interest.

I have considered the following factors favouring disclosure:

- (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 have considered the following factor favouring disclosure:

- (c) prejudice to the safety and welfare of AFP personnel;
- (d) prejudice to the AFP's ability to comply with work health and safety obligations; and

- (e) release may have a substantial adverse effect on the management of personnel in future.

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

The name of a CSC employee has also been exempted from the document (see top of Folio 2). Further to consultations, and the general principles outlined above, I am satisfied that disclosure of this information is not in the public interest.

Accordingly, I find these parts of the document exempt under section 47E(c) of the Act.

*****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/>.