



**AFP**

AUSTRALIAN FEDERAL POLICE

INFORMATION ACCESS (FREEDOM OF INFORMATION)

GPO Box 401 Canberra City ACT 2601  
Telephone 02 6131 6131 Facsimile 02 6132 6082

Email [foi@afp.gov.au](mailto:foi@afp.gov.au)

[www.afp.gov.au](http://www.afp.gov.au)

ABN 17 864 931 143

Our ref: CRM 2015/318

13 March 2015

Mr Ben Fairless

Email: [foi+request-912-ea594803@righttoknow.org.au](mailto:foi+request-912-ea594803@righttoknow.org.au)

Dear Mr Fairless,

**Freedom of Information request re: Data Retention Briefing**

I refer to your letter dated 5 February 2015, under the *Freedom of Information Act 1982* (the Act) seeking the following:

*"A copy of the PowerPoint presentation titled 'Data Retention Briefing to the Hon Tony Abbott MP, Prime Minister of Australia.'"*

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.

***Information Publication Scheme (IPS)***

As notified to you on 6 February 2015 and in accordance with section 11C of the Act, it has been decided to publish the documents in full in respect of your request. Publication of the documents and any relevant documents will be made on the AFP website at <http://www.afp.gov.au/about-the-afp/information-publication-scheme/routinely-requested-information.aspx> between 5 and 10 days after notification of this decision.

Yours sincerely,

Nathan Scudder  
Coordinator  
Information Access  
Operations Support  
Australian Federal Police

## STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY BEN FAIRLESS

I, Nathan Scudder, Coordinator, Information Access 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 5 February 2015, this office received your letter in which you requested:

*"A copy of the PowerPoint presentation titled 'Data Retention Briefing to the Hon Tony Abbott MP, Prime Minister of Australia.'"*

### SEARCHES

In relation to this request, the following searches for documents have been undertaken:

- a) a search of all records held by the relevant line areas within the AFP.

### DECISION

I have identified one document relevant to your request. A schedule detailing my decision is at Annexure B.

I have decided that the document that relates to your request is released with deletions pursuant to subsection/s 37(2)(b) and 47F of the Act.

My reasons for this decision are set out below.

### REASONS FOR DECISION

#### ***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 parts of 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 parts of the documents would be an unreasonable disclosure under subsection 37(2)(b) of the Act.

***Folios to which section 47F apply:***

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 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 personal information.

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

In relation to the factors against disclosure, I believe that the following are relevant:

- (g) prejudice the protection of an individual's right to privacy;
- (h) impede the flow of information to the police;
- (i) 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
- (j) if such information was disclosed, it may discourage public cooperation in AFP investigations.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (g) to (j) above and conclude that on balance, disclosure is not in the public interest. The AFP has not received consent regarding the release of personal information regarding this request, disclosure of that information would be contrary to an individuals' right to the protection of their personal privacy. I find that the release of these parts of documents would be an unreasonable disclosure of personal information and is therefore exempt under section 47F 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  
Operations Support  
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-oaic-shut-down-and-foi-reviews-and-complaints](http://www.oaic.gov.au/info-on-oaic-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.

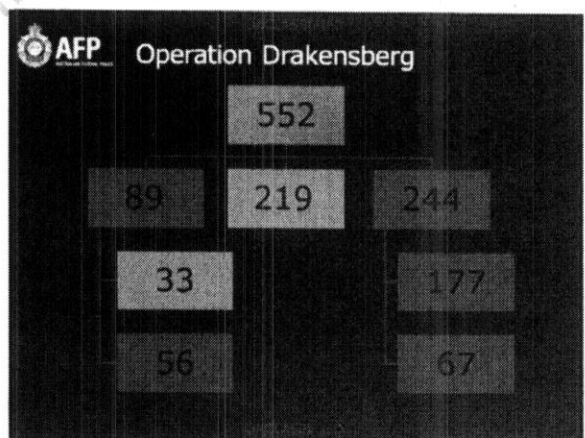
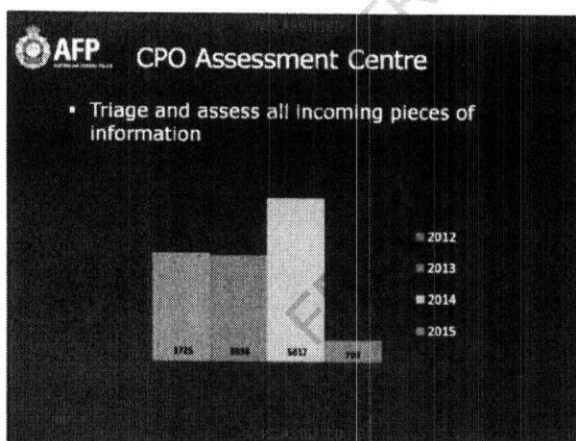
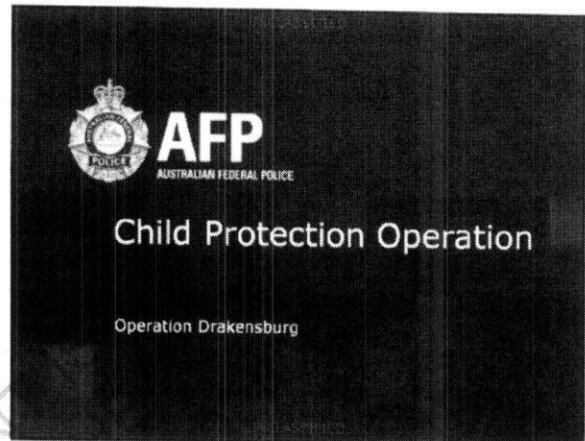
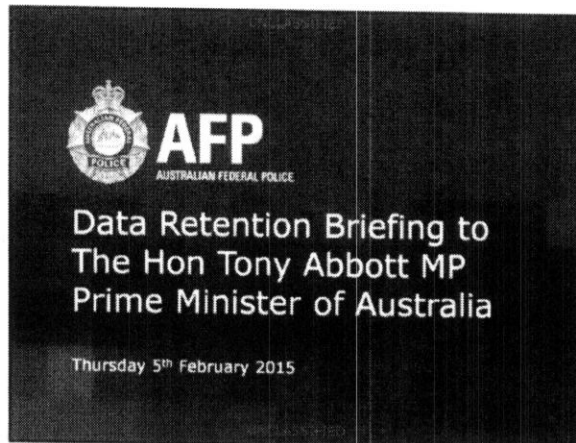
SCHEDULE OF DECISION – CRM 2015/318  
RELEASE OF DOCUMENTS – BEN FAIRLESS

Document No	Folio No	Date	Author/Addressee	Description	Exemption/Public Interest Claimed	Reason
1	1-7		Australian Federal Police (AFP)	PowerPoint presentation - Data Retention Briefing to the Hon Tony Abbott MP Prime Minister of Australia	Released with deletions: 37(2)(b), 47F Folios: 1-7	<p><b>s37(2)(b)</b> Deletions are made on the grounds that release would 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.</p> <p><b>s47F</b> Deletions are made on the grounds that disclosure would involve the unreasonable provision of personal details of people other than the FOI applicant. Access must be given unless it would be contrary to the public interest.</p>

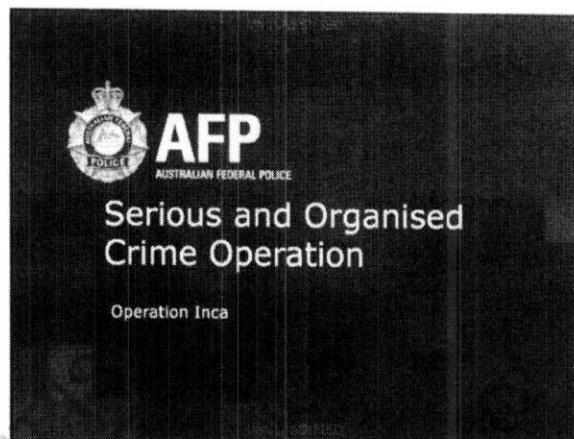
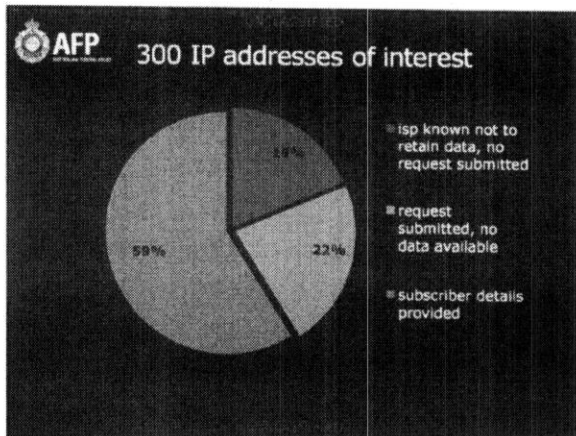
Authorised Decision Maker: Nathan Scudder, Coordinator  
Information Access (Freedom of Information)  
Operations Support  
Australian Federal Police

Date of Decision: March 2015









**AFP** Operation Inca

- 20' shipping container with 4.4 tons ecstasy arrived Port of Melbourne 28 June 2007 consigned to "Transglobal Foods";
- Freight forwarder "Tytherleigh Logistics" located Tullamarine, Melbourne;
- Ecstasy tablets replaced by AFP, controlled delivery attempted;
- 10 July 2007 - Container unpacked at Tytherleigh leading to overt action by Police;
- Controlled delivery unsuccessful. No arrests.

**AFP** "Tytherleigh Contact"

- Beeline - 47F phone shop of choice;
- Between 25 July 2007 and 7 August 2007, emails exchanged by Tytherleigh Aust & Italy.

Page 3 redacted for the following reason:

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37(2)(b)

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# Tytherleigh Contact - Telecommunications Data

- Details of which sim used in which handset;
- Time and place of sale and activation;
- Time, date and cell site location of Kinden sim calls to Tytherleigh;
- Time, date and cell site location of known services used by [REDACTED] 47F
- Able to build strong circumstantial case that [REDACTED] 47F either made the calls or was present during them.

37(2)(b)

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37(2)(b)



#### Use of telecommunications data

- 2000 call charge records (CCR's);
- Used as the building blocks to obtain Telephone Intercepts (TI);
- 249 services intercepted during investigation;
- 47F used 97 identified services.
- Telecommunications data continued to be requested as late as November 2013 for court purposes and 37(2)(b)
- 37(2)(b)
- Telecommunications data analysis was used to exculpate Tytherleigh employees.



## Use of telecommunications data

- Strong evidentiary value;
- Identify distinct criminal groups coming together;
- Identify new targets;
- Patterns of activity (false phones each month, phone per purpose, same phone store);
- Use of handset data associated with telephone calls to link targets to false phones.



**AFP**  
AUSTRALIAN FEDERAL POLICE

## Counter-Terrorism Operation

Operation Pendennis-Eden



## Operation Pendennis-Eden

- A joint investigation into two connected groups of Islamic extremists based in Melbourne and Sydney
- Involved the AFP, NSW Police, NSW Crime Commission, Victoria Police and ASIO
- Resulted in the conviction of nine individuals in NSW & nine in Victoria
- Successfully prevented potential terrorist attack




## Modus Operandi

- Training in remote rural areas
- Transfer of knowledge to trained / untrained


(b)(2)(b)

- Stockpiling of weapons and ammunition
- Procurement of chemicals carried out by numerous group members
- Use of counter surveillance
- Attempts to source chemicals

 **AFP** Use of Metadata

- Useful in:
  - Identifying & confirming communication between members
  - Identifying relevant subjects
  - Supporting applications for warrants for other powers
- Telecommunication related data formed a substantial part of the prosecution case
  - Eight of these individuals are still in jail
  - Five individuals received sentences over 20 years (one for 28 years' imprisonment)

\*\*Please refer to diagrams for more detail of how metadata assisted this investigation.

 **AFP**

Questions?

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