



AFP
AUSTRALIAN FEDERAL POLICE

OFFICIAL

Our ref: LEX 932

31 October 2022

ME

Via email: foi+request-9440-b5f3e810@righttoknow.org.au

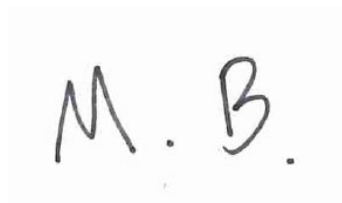
Dear Sir / Madam

Freedom of Information request – LEX 1075

I refer to your request dated 5 October 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.

Yours sincerely



Matt Baillie
Principal Lawyer
Freedom of Information and Privacy
Chief Counsel Portfolio

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

I, Matt Baillie, Principal Lawyer – Freedom of Information and Privacy, 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 5 October 2022, the AFP received your request in the following terms:

I request a copy of any legal advice in the AFP's possession, dated on or after 1 January 2019, whether internal or external, that relates to s 2.2.9 or s 2.2.10 of the Superannuation (PSSAP) Trust Deed.

SEARCHES

Searches for documents were undertaken by relevant members of AFP Legal, including of the AFP's legal matter management system.

WAIVER OF CHARGES

Given your request was neither voluminous nor complex to process, I am waiving the fees or charges normally associated with the processing of applications under the Act.

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 document identified as relevant to the request;
- advice from AFP officer with responsibility for matters contained in the document;
- the Act; and
- the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the Act (FOI Guidelines).

DECISION

I have identified one (1) document relevant to your request. I have decided to exempt the document in full under s 42(1) of the Act. My reasons for this decision are set out below.

REASONS FOR DECISION

Material to which section 42(1) applies

Section 42(1) of the Act provides that:

“(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.”

The FOI Guidelines at [5.129] outline the following considerations for determining whether a communication is considered privileged:

- whether there is a legal adviser-client relationship;
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation;
- whether the advice given is independent;
- whether the advice given is confidential.

The document identified as exempt under this section contains communications between the AFP and its legal adviser, and was brought into existence for the dominant purpose of obtaining or providing independent legal advice. The advice was provided in confidence, and confidence has been maintained over the advice. The AFP has not waived privilege over the document.

I am satisfied that the document would be subject to a claim of legal professional privilege and justifiably withheld from production in legal proceedings.

Accordingly, I find that the document is exempt in full under section 42(1) of the Act.

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*****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.

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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/>.