



**AFP**  
AUSTRALIAN FEDERAL POLICE

Our ref: LEX 1075IR

15 April 2023

ME (Right to Know)

By email: [foi+request-9440-b5f3e810@righttoknow.org.au](mailto:foi+request-9440-b5f3e810@righttoknow.org.au)

Dear Sir / Madam,

**Internal review of Freedom of Information decision – LEX 1075IR**

I refer to your request for internal review of the AFP's decision dated 31 October 2022 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

Alison Macdonald  
General Counsel, Operations Legal  
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN INTERNAL REVIEW OF AN FOI DECISION BY  
ME (RIGHT TO KNOW)**

I, Alison Macdonald, General Counsel, Operations Legal, am an officer authorised under section 23 of the Act to review original decisions made and make new decisions on behalf of the Australian Federal Police (**AFP**).

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

**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.*

On 31 October 2022, the AFP notified you of its decision to exempt one document (the **document**) in full under section 42(1) of the Act (the **original decision**).

On 1 November 2022, you wrote to the AFP requesting an internal review of the decision as follows:

*I am writing to request an internal review of Australian Federal Police's handling of my FOI request 'Legal advice regarding PSSap Trust Deed'.*

*I note there is one document relating to this request, and that the sole reason for non-disclosure is LPP.*

*The decision did not consider s 42(3), requiring disclosure of any/all operational information contained in the requested document, even if the document is subject to LPP.*

*In addition, the AFP is free to waive LPP and release the document under 42(2). I draw the decision-maker's attention to (1) the Commonwealth's poor record of considering legal advice (<https://www.abc.net.au/news/2022-10-31/qld-royal-commission-robodebt-inquiry-commonwealth/101596246>) and (2) the AFP's commitment to increase transparency and integrity by only withholding information for a good reason, not just because it can (<https://www.news.com.au/national/afp-boss-promise-comes-true-overoperation-transparency/news-story/fbe0b6edafa4208eedf1c50de33aba0e>).*

*That being the case I request:*

- (1) the document be released in full (excl staff info etc); and*
- (2) if not released in full, reasons for decision be given concerning 42(2); or*
- (3) operational information be released; and*
- (4) if operational information not released, reasons for decision be given concerning 42(3).*

We apologise for the delay in providing you with an internal review decision.

**EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED**

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

- the original decision;
- the document;
- the submissions you provided in support of your request for internal review;
- the Act; and
- the guidelines issued by the Office of the Australian Information Commissioner (OAIC) under section 93A of the Act.

**DECISION**

I have decided to affirm the original decision. My reasons for this decision are set out below.

**REASONS FOR DECISION**

In relation to the application of legal professional privilege to the document, I rely on the reasons provided in the original decision.

In response to your request for internal review of the original decision, I have considered the following sections of the Act:

- *section 42(2) – waiver*

Section 42(2) confirms a document is not exempt under section 42(1) if the person entitled to claim legal professional privilege waives that privilege.

The AFP has not waived privilege over the document.

- *section 42(3) – operational information*

Section 42(3) confirms a document is not exempt under section 42(1) by reason only of the inclusion of operational information in that document. ‘Operational information’ is further defined in section 8A of the Act to include information held by an agency to assist that agency in performing or exercising their functions or powers in making decisions or recommendations affecting members of the public or any particular person or entity or class of persons or entities.

The document was prepared in response to a specific legal issue and is not for wider or general use within the AFP. I am therefore satisfied the document does not contain operational information.

**\*\*\*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 for a review by the Information Commissioner (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 VII of the Act***

#### ***Review by the Information Commissioner***

Section 54L of the Act gives you the right to apply 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 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](mailto:foidr@oaic.gov.au)), using the OAIC's online application form (available at [www.oaic.gov.au](http://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/>.