



AFP
AUSTRALIAN FEDERAL POLICE

Our ref: LEX 1267

16 March 2023

XD 1022-2021

Email: foi+request-9489-a238745d@righttoknow.org.au

Dear XD 1022-2021

Freedom of Information request

I refer to your request dated 24 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
XD 1022-2021**

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 24 October 2022, the AFP received your two requests in the following terms:

*“Please provide all documents in PROMIS linked or otherwise related to:
(1) Ms Tonglian Wang DOB 27 February 1970
(2) Ms Amy Xiyun Zhang DOB 14 November 1967 (including name variations - e.g., 'Amy Zhang' and 'Xiyun Zhang')”*

EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

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

- the nature of records that may be captured by your request;
- the scope of your request;
- the Act; and
- the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the Act.

DECISION

In accordance with section 26(2) of the Act, the AFP has no documents to produce in response to your request.

Given the scope of your request, if documents did exist, revealing the existence of such documents would divulge police engagement with members of the public, which in itself would be an unreasonable disclosure of personal information and operations of the AFP. I am satisfied that any document held by the AFP in response to this request would be exempt in full pursuant to sections 47F of the Act.

My reasons for this decision are set out below.

REASONS FOR DECISION

Material to which section 47F applies:

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).”

Any documents responding to the scope of your request would contain the personal information of the people referenced in your scope. In considering whether release of the information would be unreasonable, I have taken into account factors at section 47F(2), including:

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

I find release of personal information to be unreasonable. There is no publicly available information about any police activity in relation to these premises. Disclosing such information to a member of the public, in the absence of any criminal charges, would be a significant intrusion into their personal lives.

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

I have considered the general public interest in access to documents as expressed in sections 3 and 11B of the Act as the factor favouring disclosure, as well as the public interest in people being able to scrutinise the operations of a government agency. As you have made this application anonymously, I am not able to determine whether there are any additional factors specific to you which might weigh in favour of disclosure.

I have considered the following factors against disclosure:

- (a) prejudice to the protection of an individual's right to privacy;
- (b) the risk that if people are aware their personal information could be disclosed, that this would impede the flow of information to the police;
- (c) the fact that there is no information on the public record or available from publicly accessible sources;
- (d) the effect that disclosure of the information may have on third parties.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to the factors against disclosure above and conclude that on balance, disclosure is not in the public interest. A person's right to privacy must prevail over the curiosity of strangers.

Accordingly, I find the documents or parts of documents are exempt under section 47F of the Act.

Application of section 26(2) of the Act

Section 26(2) of the Act provides a decision notice such as this one "is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document."

For the same reasons as those given above, I also find that confirming the existence of any such documents would involve an unreasonable disclosure of personal information. I also find that disclosing whether there are any documents in existence would be contrary to the public

interest.

Therefore the documents would be exempt under section 47F, and the AFP will not state whether there are any documents in relation to the scope of your request.

*****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 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 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/>.