

Our ref: CRM 2015/356

12 March 2015

Ms Culley Palmer

Via email: [foi+request-975-89406d52@righttoknow.org.au](mailto:foi+request-975-89406d52@righttoknow.org.au)

Dear Ms Palmer,

### **Your Freedom of Information Request**

I refer to your application dated 22 February 2015, under the *Freedom of Information Act 1982* (the Act) seeking the following:

*"talking points authored by the Australian Federal Police discussing or mentioning the killing of any Australian citizen by a US Unmanned Aerial Vehicle (Drone) in Yemen."*

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 25 February 2015 and in accordance with section 11C of the Act, it has been decided to publish the documents in part 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 14 days after notification of this decision.

Yours sincerely,



Coordinator  
Information Access  
Operations Support  
Australian Federal Police

## **STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY CULLEY PALMER**

I, Nathan Scudder, Coordinator, Freedom of Information 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 22 February 2015 this office received your letter/application in which you requested:

*"talking points authored by the Australian Federal Police discussing or mentioning the killing of any Australian citizen by a US Unmanned Aerial Vehicle (Drone) in Yemen."*

### **SEARCHES**

In relation to this request, a search of all records held by the relevant line areas within the AFP was undertaken, in addition to a consultation with previous information released under other Freedom of Information requests dealing with the same subject matter.

### **DECISION**

I have identified 2 documents relevant to your request. A schedule of each document and details of my decision in relation to each document is at Annexure B. I note that additional documents relevant to your request have already been released to the public on the AFP's FOI disclosure log. I have not made any decision in relation to those documents and they can be accessed via the following link:

<http://www.afp.gov.au/~media/afp/pdf/ips-foi-documents/foi/disclosure-log/2014/02-2014.pdf>

I have decided that one of the documents itemised at Annexure B is released to you in its entirety. The other document relating to your request is released with deletions pursuant to subsections 33(a)(iii), 37(1)(b) and 47E(d) of the Act.

My reasons for this decision are set out below.

Further, given that the request has totalled only 4 pages and was not a complex request to process, I am waiving any further fees and charges which are normally associated with the processing of applications under the Act.

## REASONS FOR DECISION

### ***Folios to which subsection 33(a)(iii) apply:***

Subsection 33(a)(iii) of the Act provides that:

*"A document is an exempt document if disclosure of the document under this Act:*

- (a) would, or could reasonably be expected to, cause damage to:*
- ...*
- (iii) the international relations of the Commonwealth..."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act relates to information provided by an agency of a foreign government. The information was provided to the AFP by a foreign government for investigative purposes on the understanding that it would only be used for that purpose and not be disseminated further. I am satisfied that to grant access to the documents would, or could reasonably be expected to cause damage to the international relations of the Commonwealth as this information was communicated with the expectation that it would remain confidential and therefore, to disclose this material would damage the Commonwealth's relations with a foreign country. If these documents were to be released, it would be likely to inhibit the exchange of information to the AFP.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 33(a)(iii) of the Act.

### ***Folios to which subsection 37(1)(b) apply:***

Subsection 37(1)(b) of the Act provides that:

*"(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*

- ...*
- (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information that would disclose a confidential source. Section 37(1)(b) operates to protect the identity of a confidential source of information in relation to the administration or enforcement of the law. It is the source, rather than the information, which is confidential. It will apply even if the information supplied by the confidential source is now out of date or incorrect. The information contained in the documents was provided on an understanding of confidentiality in the course of investigations conducted by the agency.

I am satisfied that disclosure of the information contained in some of the folios is exempt on the grounds that if disclosed it may enable the applicant to identify the confidential source of the information. Accordingly, I find that

release of the documents or parts of the documents would be an unreasonable disclosure under subsection 37(1)(b) of the Act.

***Folios to which subsection 47E(d) apply:***

Subsection 47E(d) 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:*

- ...  
(d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency;..."*

The documents or parts of documents identified in the schedule as exempt under this section of the Act contain information, the release of which, would have a substantial adverse effect on the conduct of AFP operations, specifically its operational functions in ensuring public safety, as it reveals how information is obtained and actioned for the purposes of protecting the public.

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; and
- (b) the public interest in people being able to scrutinise the operations of a government agency and in promoting governmental accountability and transparency.

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

- (c) 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 collated;
- (d) that if information concerning the operation was revealed, it may have a substantial adverse effect on the conduct of similar operations in the future; and
- (e) if such information was disclosed, it may prejudice security, law enforcement and public safety.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (c), (d) and (e) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure public safety during police operations and the effectiveness of current procedures. I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 47E(d) 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:

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 (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 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.

**REASONS FOR DECISION – CULLEY PALMER**  
RELEASE OF DOCUMENTS – 2015/356

| Document No | Folio No | Date       | Author/Addressee                | Description                                      | Exemption/Public Interest Claimed           | Reason   |
|-------------|----------|------------|---------------------------------|--|---|--|
| 1           | 1        |            | Australian Federal Police (AFP) | DRAFT talking points                             | Released with deletions:<br>Folios: 1 and 3 | <p><b>s33(a)(iii)</b> Deletions are made on the grounds that disclosure would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.</p> <p><b>s37(1)(b)</b> Deletions are made on the grounds that disclosure would enable a third party to ascertain the identity of a confidential source of information.</p> <p><b>s47E(d)</b> Exempted material would disclose information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the AFP and would be contrary to the public interest. Access must be given unless it would be contrary to the public interest.</p> |
| 2           | 4        | 17.04.2014 | AFP                             | AFP In Anticipation talking points two deaths in | Released in full<br>Folios: 4               |  |

|  |  |  |  |       |  |  |  |
|--|--|--|--|-------|--|--|--|
|  |  |  |  | Yemen |  |  |  |
|--|--|--|--|-------|--|--|--|

Authorised Decision Maker:

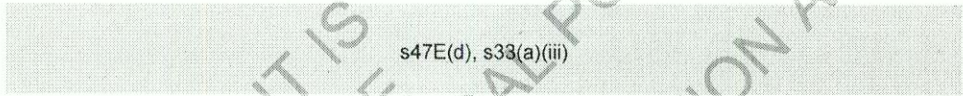
  
Nathan Scudder  
Freedom of Information  
Australian Federal Police

Date of Decision: 12 March 2015



**AFP DRAFT talking points. Note: The journalist was provided information under FOI instead of talking points.**

**Yemen counter terrorism operation:**

- It is important to note that at no point prior to the death of Christopher Rosser Havard and Daryl Jones was the AFP aware of the counter terrorism operation in Yemen.
- On 21 November 2013, the AFP was advised Australian citizens Christopher Havard and Daryl Jones, and other alleged members of al-Qa'ida in the Arab Peninsula (AQAP) had been killed during a counter terrorism operation in Yemen.
-  s47E(d), s33(a)(iii)
- Australian Government authorities were advised that Mr Havard and Mr Jones had been killed in a counter terrorism operation in Yemen. No further information was provided.

**Police investigation into alleged kidnapping:**

- The AFP can confirm it was investigating Christopher Rosser Havard in relation to kidnapping offences allegedly committed in Yemen.
- The AFP is in possession of DNA evidence allegedly linking Mr Havard to the kidnapping of two men and one woman, which occurred between 21 December 2012 and 7 May 2013 allegedly by AQAP in Yemen.
- A first instance arrest warrant was obtained for Mr Havard in Queensland in October 2013.

- As a result of Mr Havard's death in Yemen the AFP investigation into the alleged kidnapping was closed.

**Family correspondence:**

- The AFP initially attended premises in Townsville on 13 December 2013 to advise Havard's family of Christopher Rosser Havard's death. Upon establishing that the family were actually living in Theodore, the AFP members subsequently drove from Townsville to Theodore (more than 900kms – approximately 11hrs) to ensure that the message was delivered that day in person (rather than by telephone). The AFP note that the family were appreciative of this effort.
- On 13 December 2013, the AFP met with the family of Christopher Havard and informed them of his death. Mr Havard's family appeared appreciative of this effort.
- At the request of Mr Havard's family, the AFP met again with them on 8 February 2014. At this meeting the family was advised of the criminal investigation into Mr Havard's alleged involvement in kidnappings in Yemen. They were also advised that a first instance warrant had been issued for his arrest and that if he had returned to Queensland he would have been arrested and charged.
- Consular officials from DFAT made contact with Mr Havard's next of kin on several occasions following the AFP's initial contact with his family.

**If asked:**

**Did the AFP intercept phone calls of Christopher Havard when he phoned home from Yemen?**

- Due to the legislation governing telephone interceptions, the AFP cannot comment in regard to this, nor confirm or deny whether this occurred.
- The existence of a telephone intercept can only be disclosed for specific, law enforcement purposes, such as court proceedings.

**Christopher Havard's parents, Neil and Bronwyn Dowrick, say they feel abandoned by the AFP. Is this the case?**

- On 13 December 2013, the AFP met with the family of Christopher Rosser Havard and informed them of his death.
- At the request of Mr Havard's family, the AFP met again with them on 8 February 2014.
- For questions relating to the repatriation of the body of Christopher Rosser Havard please contact DFAT.

**Was Christopher Havard deliberately targeted?**

- The AFP had no involvement in this operation.

**Is the AFP planning an investigation into Christopher Havard's death?**

- The AFP informed the Queensland Coroner of Christopher Havard's death as is usual practice.

**Did the AFP share evidence or information with US authorities regarding the alleged kidnapping or HAVARD?**

- The AFP does not comment on operational matters involving foreign law enforcement.

• [REDACTED] s47E(d), s37(1)(b)

• [REDACTED] s47E(d), s37(1)(b)

## **17/4/14 AFP In Anticipation talking points two deaths in Yemen**

### **If asked:**

**Were the men subject to criminal investigations due to their alleged affiliation with AQAP or other alleged criminal activity in Yemen?**

- As is standard practice, the AFP doesn't confirm who it has previously or is currently investigating.

THIS DOCUMENT IS  
RELEASED BY THE  
AUSTRALIAN FEDERAL POLICE  
UNDER THE  
FREEDOM OF INFORMATION ACT 1982