

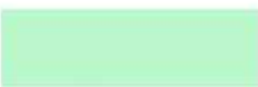


INFORMATION ACCESS (FREEDOM OF INFORMATION)

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Our ref: CRM2015/225
Your ref: 281

16 January 2015



Dear 

Freedom of Information request re: Information Request

I refer to your letter/application dated 31 October 2014, under the *Freedom of Information Act 1982* (the Act) seeking the following:

"Please provide document of AFP decision / directive / instruction to follow the money trail of the alleged theft in 2002 from China's state assets into Australia via Gao Yan."

Please provide document of AFP decision / directive / instruction not to follow the \$ 186m of ordinary citizen's savings that disappeared out of Australia via the Trio Capital fund."

On 17 December 2014, you provided a revised scope for your request in which you requested:

"Please provide document to show that the money trail of the \$186m that disappeared out of Australia via the Trio Capital fund was investigated."

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 20 November 2014 and in accordance with section 11C of the Act, it has been decided to not publish the documents in respect of your request.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'V Hardwicke', written in a cursive style.

Vicki Hardwicke
Team Leader
Information Access
Operations Support
Australian Federal Police

STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY PAUL MATTERS

I, Vicki Hardwicke, Team Leader, 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 31 October 2014, this office received your letter/application in which you requested:

"Please provide document of AFP decision / directive / instruction to follow the money trail of the alleged theft in 2002 from China's state assets into Australia via Gao Yan.

Please provide document of AFP decision / directive / instruction not to follow the \$ 186m of ordinary citizen's savings that disappeared out of Australia via the Trio Capital fund."

On 26 November 2014, you agreed to an extension of time pursuant to section 15AA of the Act.

On 17 December 2014, you provided a revised scope for your request in which you requested:

"Please provide document to show that the money trail of the \$186m that disappeared out of Australia via the Trio Capital fund was investigated."

On 8 January 2015, a further extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AB of the Act.

SEARCHES

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

- a) a "text" search of the AFP's investigation case management system PROMIS for records relating to "%Trio Capital%"; and
- b) a search of all records held by the relevant line areas within the AFP;

DECISION

I have identified eight 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 have decided that some of the documents itemised at Annexure B are released to you in their entirety. Some of the documents that relate to your request are released with deletions pursuant to subsection/s 22(1)(a)(ii), 33(a)(iii), 33(b), 37(1)(a), 37(1)(b), 37(2)(b), 47C, 47E(d), 47F 47G(1)(a) and 47G(1)(b) of the Act.

Further, given that the request has exceeded all statutory timeframes as outlined at Section 15 of the Act, the AFP is not able to impose any fees or charges as outlined at Regulation 5(2)&(3) of the *Freedom of Information (Charges) Regulations 1982*.

REASONS FOR DECISION

Folios to which subsection 22(1)(a)(ii) apply:

Subsection 22(1)(a)(ii) of the Act provides that:

- "(1) Where:
 - (a) an agency or Minister decides:
 - (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request;"

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information which is considered irrelevant to the request. I have determined that information contained in some of the folios should be deemed to be exempt because it does not come within the scope of your application and thus falls outside the ambit of your request. By way of further explanation, these exempt folios cover information which refers to other issues which are not mentioned in your FOI application.

I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 22(1)(a)(ii) of the Act.

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 33(b) apply:

Subsection 33(b) of the Act provides that:

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

- ...
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information provided by a foreign government on an understanding of confidentiality and on the condition that they are not to be released outside of the AFP. The information was provided on a confidential basis for investigative purposes only and disclosure would be a breach of that confidence and could potentially harm the future supply of information to the AFP. I am satisfied that to grant access to the documents would divulge information communicated in confidence to the AFP by a foreign government.

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

Folios to which subsection 37(1)(a) apply:

Subsection 37(1)(a) 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:*
 - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;"*

The documents or parts of documents identified in the schedule as exempt under this section of the Act contain information which if disclosed would or could reasonably be expected to prejudice the conduct of a current investigation. I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 37(1)(a) 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 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 documents or 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 documents or parts of the documents would be an unreasonable disclosure under subsection 37(2)(b) of the Act.

Folios to which section 47C apply:

Section 47C of the Act provides that:

*"(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information, the release of which, is exempt on the grounds that it is an internal working document of the AFP. Provision of these folios would disclose matter in the nature of consultation and deliberation that has taken place for the purposes of the deliberative processes involving the operational functions of the Australian Federal Police.

Further, the document records advice, recommendations and opinion in material prepared by the AFP during which time members were required to communicate directly, freely and confidentially on issues which are considered to be sensitive.

There is also public interest in protecting the integrity of the decision-making process by separating the final decision-making policy or policy making steps and the reasons therefore from the opinions and advice of the officials who contributed to the consideration.

Subsection 47C(2) provides that:

"...

(2) Deliberative matters does not include either of the following:

- (a) operational information (see section 8A);*
- (b) purely factual material.*

As the opinion in this information involved analysis of the facts of the review to form a judgement, I am satisfied that this information is not purely factual material and therefore is not excluded under subsection 47C(2) of the Act.

I have considered the public interest factors both in favour and against disclosure of the information in these folios to determine whether disclosure would be contrary to the public interest.

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) if such information was disclosed, it would restrict the ability of AFP employees in future to record their opinions directly, freely and confidentially during an investigation process;
- (d) disclosure would prejudice the agency's ability to form an analysis and present its recommendations in relation to law enforcement investigations; and
- (e) that if information concerning the documents was revealed, it may compromise the AFP's operations and damage relations with external stakeholders.

I have considered the public interest factors both in favour and against disclosure and in my view, in relation to these documents, the factors at (c), (d) and (e) against disclosure outweigh the factors in favour of disclosure. I find that release of the documents or parts of the documents would be an unreasonable disclosure under section 47C 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), (e) and (f) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure continued cooperation during police investigations and the effectiveness and integrity 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.

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 documents or 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 some 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 documents or parts of documents would be an unreasonable disclosure of personal information and are therefore exempt under section 47F of the Act.

Folios to which section 47G apply:

Section 47G of the Act provides that:

- "(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
 - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information which relates to the business affairs of a private organisation. The information was obtained by the AFP directly from the private organisation during the course of an investigation. It is considered that this private organisation would be unreasonably affected by the disclosure of the information as it directly relates to their business and commercial affairs. It is also considered that the AFP would be unreasonably affected by the disclosure of the information as it would jeopardise the future supply of information from that private organisation.

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) disclosure would adversely affect the commercial value of the private organisation as it would reveal the methods in which they manage their business, commercial affairs and private clientele. These

- processes may be private to them and disclosure would be unreasonable;
- (d) disclosure would prejudice the expectation of confidentiality of the information, in particular the commercial value of the private organisation and the personal information of its clientele. The confidentiality would be an inherent expectation of the organisation's clientele and any breach of which could adversely affect the organisation by exposing it to civil claims and liability.
 - (e) disclosure would also adversely affect the future commercial earnings of the private organisation if information obtained confidentially was disclosed. Such disclosure could inhibit the organisation's future ability to acquire and maintain a clientele base.
 - (f) disclosure would prejudice the future supply of information to the AFP for the purposes of the administration of a law and in particular for the purposes of an investigation. Disclosure of the information would compromise the relationship between the AFP and that private organisation which in turn would prejudice the AFP's ability to effectively carry out its operations as a policing agency.
 - (g) disclosure would also deter the private organisation from assisting the AFP in any future investigations as the expectation of providing that information confidentially would be compromised.

I have considered the public interest factors both in favour and against disclosure and in my view, in relation to these documents, the factors at (c) to (g) against disclosure outweigh the factors in favour of disclosure. I find that release of the documents or parts of the documents would be an unreasonable disclosure under section 47G 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;
- ❖ consultation with relevant Commonwealth Agencies;
- ❖ *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.

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.