

Our ref: CRM 2013/213

12 February 2013

Ms R LeMay
Email: renai@delimiter.com.au

Freedom of Information request re: Section 313

I refer to your letter dated 14 January 2014, under the *Freedom of Information Act 1982* (the Act) seeking the following:

*"The complete text of all notices issued by the AFP under Section 313 of the Telecommunications Act to any Australian ISP over the two years preceding 14 January 2013 that mention Interpol's blacklist of objectionable sites;
Any responses sent by ISPs to the AFP in response to the issuing of those notices, and any communication from the AFP to the ISPs in response to those responses."*

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.

Yours sincerely,



Superintendent Allan J Spencer
Coordinator
Information Access (Freedom of Information)
Government Relations

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
NAME OF APPLICANT**

I, Allan J Spencer, 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 14 January 2014, this office received your letter in which you requested:

*"The complete text of all notices issued by the AFP under Section 313 of the Telecommunications Act to any Australian ISP over the two years preceding 14 January 2013 that mention Interpol's blacklist of objectionable sites;
Any responses sent by ISPs to the AFP in response to the issuing of those notices, and any communication from the AFP to the ISPs in response to those responses."*

SEARCHES

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

- a) a search of all records held by the relevant line areas within the AFP;

DECISION

I have identified 43 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 47(2)(b), s47E(d) and s47F the Act.

My reasons for this decision are set out below.

REASONS FOR DECISION

I find that some of the documents relevant to your request are partially exempt under the provisions of the Act, as set out in the Schedule, for the reasons outlined below.

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 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;..."

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.

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.

REVIEW RIGHTS

If you are dissatisfied with this decision you can apply for internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking IC review.

Internal Review by the AFP

Section 53A of the Act gives you the right to apply for an internal review in writing to this Department within 30 days of being notified of this decision.

No particular form is required but it would assist the decision-maker were you to set out in the application, the grounds on which you consider that the decision should be reviewed.

Applications for a review of the decision should be addressed to:

Government Relations
Information Access Team
Australian Federal Police
GPO Box 401
Canberra ACT 2601

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 with this Agency. In making your application you need to provide:

- an address for notices to be sent (this can be an email address).
- A copy of this decision.

It would also help if you set out the reasons for review in your application.

Applications for a review of the decision should be addressed to:

Office of the Australian Information Commissioner
GPO Box 2999
Canberra ACT 2601

Right to Complain

Section 70 of the Act provides that a person may complain to the IC about action taken by this Department 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.