

16 April 2013

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### Internal Review

I refer to your request dated 18 February 2013, seeking a review under the *Freedom of Information Act 1982* (the Act) of the AFP's decision in relation to your FOI request made on 12 February 2013. I regret the delay in responding to you.

The Commissioner of the Australian Federal Police, being the principal officer of this organisation, has authorised me to review this decision. My role as the internal review officer is to bring a fresh, independent and impartial mind to the review. I was not involved in the original decision on your request.

The Office of the Australian Information Commissioner (OAIC) guidelines on internal reviews note that I can either rely on work undertaken by the original decision maker, or can cause the same work to be undertaken again. After looking at the file related to your request I have relied on the work of the original decision maker in terms of searching for the documents. I have also consulted the relevant functional area again.

I have considered your FOI request of 14 January 2013, examined the documents identified by the original decision maker and assessed the information contained in those documents. To assess the grounds of the original decision and any additional grounds the relevant functional area had to maintain the exemptions applied by the decision maker, I have consulted the guidelines issued by the OAIC on the public interest exemptions in sections 37(2)(b), 47E(d) and 47F of the Act. In doing so I have considered the arguments you put forward in relation to the identity of several ISPs already being a matter of public record as the result of an earlier AFP FOI release dated 15 December 2011 and the application of section 47F in relation to information concerning publicly known members of large corporations.

My decision in relation to each of these exemptions applied by the decision maker is as follows.

#### *Section 37(2)(b)*

This section was applied to the documents you sought in January 2013 to protect the use by the AFP of a lawful method for preventing, detecting, investigating or dealing with a breach of the law (the distribution of child abuse material) because disclosure of the exempted material would or would reasonably be likely to prejudice the effectiveness of the 313 notices in place and those under negotiation or that could be sought in the future.

The material released to you under your earlier request related to a trial and while it did include the names of a number of internet service providers participating in or considering participation in the trial, the documents you sought in this request are different documents which contain more information that confirms the scope of the

trial and ongoing arrangements. To release the exempted material would confirm who is participating, who is not and who was considering their position. I believe this would prejudice the effectiveness of these notices. In terms of the OAIC guidelines, I believe this is not a routine method or technique that is well known to the public. For these reasons I uphold the section 37(2)(b) exemptions put in place by the decision maker.

#### *Section 47E(d)*

This section was applied to the same material that was exempted under section 37(2)(b). This section was applied to protect AFP operations from a substantial adverse effect on their proper and efficient conduct that would or could be reasonably expected to occur if the exempted material was disclosed.

The OAIC guidelines set out that public interest factors in favour of disclosure. The factors favouring disclosure that I believe that are relevant here are informing debate on a matter of public importance and contributing to the enforcement of the criminal law.

The OAIC guidelines also outline public interest factors against disclosure. The factors against disclosure I believe are relevant here are whether disclosure of the exempted material could be reasonably expected to:

- impede the flow of information to the AFP;
- prejudice the AFP's ability to obtain confidential information;
- prejudice the AFP's ability to obtain similar information in the future; and
- prejudice the competitive commercial activities of an agency.

As outlined above I need to consider the impact of the material released to you under your earlier request related to a trial on this request which relates to the trial and ongoing arrangements. Similarly while that earlier request did include the names of a number of internet service providers participating in or considering participation in the trial, the documents you sought in this request are different documents which contain more information that confirms the scope of the trial and ongoing arrangements. To release the exempted material would confirm who is participating, who is not and who was considering their position.

Therefore on balance, I do not believe that the disclosure of these documents would contribute to the enforcement of the criminal law. While the documents would inform debate on a matter of public importance, I believe the cost of impeding the flow of information to the AFP, prejudicing the AFP's ability to obtain confidential information and its ability to obtain similar information in the future outweighs any contribution the exempted material would make to public debate. This prejudice goes beyond the effectiveness of the s313 notices to facilitate the use of the blacklist and the use of the blacklist by internet service providers. The release of the exempted material could undermine future cooperation from the affected internet service providers. The release of the exempted material could also reasonably be expected to affect internet service providers' commercial activities by confirming who participated in the trial and who is participating now.

#### *Section 47F*

This section was used by the decision maker to exempt a range of information relating to AFP officers and employees of the internet service providers contacted. From my examination of the documents it was not applied primarily to exempt their identities and positions from release. Sections 37(2)(b) and 47E(d) were used for that purpose for the grounds above. Instead section 47F was used to exempt signatures of AFP officers, mobile phone numbers and in limited cases as an additional exemption to section 37(2)(b) on some email addresses of ISP employees.

I have considered the OAIC guidelines on this exemption and the decision maker's reasoning for and application of the exemption. I uphold the application of this exemption by the decision maker.

As I may not have satisfied your request to grant access to documents, I advise that Section 54L of the Act gives you the right to apply directly to the IC. 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.

Further, 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. The IC may be contacted on 1300 363 992. The FOI complaint form can be found on the OAIC website, [www.oaic.gov.au](http://www.oaic.gov.au), under the Freedom of Information link. In filling out the form, the form should set out the grounds on which you consider the action should be investigated.

Yours sincerely,



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