

Our ref: CRM 2013/274

26 June 2013

Mr Rodney Serkowski
Email: Rodney.serkowski@pirateparty.org.au

Dear Mr Serkowski

Freedom of Information request – Social Media & Social Networking sites

I refer to your application dated 15 February 2013, under the *Freedom of Information Act 1982* (the Act) seeking the following:

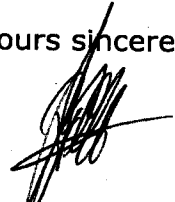
- (a) Documents, reports, memoranda or policy statements not already made publicly available, regarding the use of social media or social networking sites in formal police inquiries, surveillance and investigation.
- (b) Documents not already made publicly available detailing any formal or informal co-operative arrangements between law enforcement agencies and any such social networking sites, detailing prices and/or procedures for such agencies seeking access to information or details regarding subscribers to those services.
- (a) In particular, any such 'Compliance Guides for Law Enforcement' as provided by organisations such as Yahoo! Australia and New Zealand, but not limited to that organisation for the purpose of this request.

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 1 March 2013 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,



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

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
Rodney Serkowski (Pirate Party)**

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 15 February 2013, this office received your application in which you requested:

(a) Documents, reports, memoranda or policy statements not already made publicly available, regarding the use of social media or social networking sites in formal police inquiries, surveillance and investigation.

(b) Documents not already made publicly available detailing any formal or informal co-operative arrangements between law enforcement agencies and any such social networking sites, detailing prices and/or procedures for such agencies seeking access to information or details regarding subscribers to those services.

(a) In particular, any such 'Compliance Guides for Law Enforcement' as provided by organisations such as Yahoo! Australia and New Zealand, but not limited to that organisation for the purpose of this request.

On 1 March 2013, you agreed to an extension of time pursuant to section 15AA of the Act.

On 10 April 2013, you were notified of the requirement to consult a third party pursuant to subsection 15(6) of the Act.

On 30 May 2013, a further extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AC of the Act.

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 in relation to this request.

DECISION

I have identified 23 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 all of the documents itemised at Annexure B are exempt in full, pursuant to subsections 33(a)(iii), 37(2)(b) and 47E(d) of the Act.

Although, the AFP is unable to release any information to you at this time, there is a large amount of material available which can be accessed through many open source links. Examples outlined below:

- On the AFP Website, under International Liaison :
<http://www.afp.gov.au/policing/international-liaison.aspx>
- through INTERPOL (and country acceptance of the INTERPOL Constitution): <http://www.interpol.int/en>
- Mutual Assistance in Criminal Matters Act 1987 -
http://www.austlii.edu.au/au/legis/cth/consol_act/maicma1987384/
- Australian Federal Police Act 1979 -
<http://www.comlaw.gov.au/Series/C2004A02068>

In addition, a number of social networking sites have information which is publicly available and can be accessed at the following links:

Facebook

<https://www.facebook.com/help/?page=1057>

Yahoo

<http://help.yahoo.com>

Publicly available material has not been provided as part of your request.

My reasons for this decision are set out below.

WAIVER OF CHARGES

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 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(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;..."*

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 investigative functions, as it reveals how information is obtained and actioned for the purposes of those investigations.

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.

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 ;
- ❖ consultation with third parties;
- ❖ *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 (FOI)
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.