



‘AH’ and Australian Federal Police [2013] AICmr 59 (6 June 2013)

Decision and reasons for decision of
Freedom of Information Commissioner, Dr James Popple

Applicant:	‘AH’
Respondent:	Australian Federal Police
Decision date:	6 June 2013
Application number:	MR11/00366
Catchwords:	Freedom of information — Deletion of irrelevant matter — Whether information deleted from document irrelevant to the request — Whether disclosure would involve unreasonable disclosure of personal information — (CTH) <i>Freedom of Information Act 1982 s 22, 47F</i>

Contents

Summary	1
Background	2
Decision under review	2
Irrelevant matter (s 22).....	3
Findings	4
Personal privacy exemption (s 47F).....	4
Findings	5
Consultation with third parties.....	5
Decision.....	5

Summary

1. I set aside the access refusal decision of the Australian Federal Police (**AFP**) of 16 March 2012 and substitute my decision, under s 22 of the *Freedom of Information Act 1982* (the **FOI Act**), granting access to a copy of the document modified by deletions.

Background

2. On 20 and 21 December 2009, the applicant made a number of complaints to the AFP about the conduct of certain AFP officers. An AFP professional standards investigation found that, of the applicant's six complaints, one was established: failure to comply with a process required by the AFP Code of Conduct. On 15 April 2011, the AFP wrote to the applicant informing him of the outcome of the investigation.
3. On 21 May 2011, the applicant applied to the AFP for 'documents outlining the disciplinary sanctions and underlying reasons for choosing these sanctions' in relation to the three AFP officers who had been found to have breached the AFP Code of Conduct.
4. On 9 June 2011, the AFP refused the applicant's request on the basis that the documents requested did not exist (s 24A of the FOI Act). The AFP's decision also stated that:

... although no documents were identified up to the date of your application, some information was identified which was created after that date. You may wish to make a new application to seek access to this information.
5. On 17 June 2011, the applicant applied again to the AFP for access to 'documents outlining the disciplinary sanctions and underlying rationale for choosing these sanctions' in relation to the three AFP officers. That application was misplaced by the AFP and was not processed. Under s 15AC(3) of the FOI Act, the request was deemed to have been refused.
6. On 28 October 2011, the applicant applied for IC review of the AFP's deemed access refusal decision. The Office of the Australian Information Commissioner made enquiries of the AFP regarding the applicant's FOI request of 17 June 2011, and the AFP agreed to process that request.
7. On 16 March 2012, the AFP advised that it had identified one document within the scope of the applicant's request: a minute dated 31 May 2011 (the **minute**). It records the outcome of the professional standards investigation, namely that certain AFP officers were counselled in relation to their conduct. The AFP decided to release an edited copy of this document to the applicant. In making its decision, the AFP relied upon the personal privacy exemption (s 47F) and edited some material that it considered irrelevant as it fell outside the scope of the applicant's request (s 22).

Decision under review

8. The decision under review is the decision of the AFP of 16 March 2012 to refuse the applicant full access to the minute.

Irrelevant matter (s 22)

9. Section 22(1) of the FOI Act relevantly provides:

Access to edited copies with exempt or irrelevant matter deleted

(1) This section applies if:

- (a) an agency or Minister decides:
 - (i) to refuse access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
- (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under s 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request ...

Section 22(2) requires an agency or a minister to prepare an edited copy and give the applicant access to it.

- 10. The AFP deleted from the minute material relating to six AFP officers: details of disciplinary action that was taken in relation to all six officers, and the dates that that action was taken. The applicant's request was for information about 'disciplinary sanctions' in relation to three of those officers, whom he identified by name. I consider that the names of the three officers not identified in the applicant's FOI request, and details of action taken in relation to those officers, are not relevant to the applicant's request.
- 11. In its reasons for decision, the AFP explained that the information it had redacted from the minute concerns performance management issues that (even in relation to the three officers named in the applicant's request) are not directly related to the applicant or his request. In submissions to the OAIC, the AFP advised that the action described in the document had been taken for various reasons: the applicant's complaint was only one of those reasons.
- 12. The minute has the same complaint reference number as was given in the letter that the AFP sent to the applicant on 15 April 2011 informing him of the outcome of the investigation of his complaints. (The applicant specifically referred to this reference number in his FOI request.) This suggests that the actions outlined in the minute primarily arose out of the applicant's complaint and the investigation that followed. In any event, I am satisfied that the information in the minute about the three named officers relates to the outcome of the applicant's complaint. Even if there are additional reasons why it was included in the minute, that information is relevant to the applicant's request.

13. The minute also records a decision about whether further action should be taken in relation to the named officers. This is additional information about the outcome of the investigation. It is relevant to the applicant's request.
14. The minute also includes information about where some of the officers were working at the time that the minute was written. That information is not relevant to the applicant's request.

Findings

15. The information in the minute about the action taken in relation to the individuals identified in the applicant's request, and whether the AFP considered further action was necessary, is relevant to the applicant's request.
16. Information about officers not identified in the applicant's request is not relevant to the applicant's request.
17. Information about where the officers were then working is not relevant to the applicant's request.

Personal privacy exemption (s 47F)

18. Section 47(1) of the FOI Act provides:

Public interest conditional exemptions—personal privacy

General rule

- (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).
19. Section 4 of the FOI Act provides that personal information means 'information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.
 20. The minute includes the names of the three identified officers and the date and manner in which they were counselled. The document also includes information about whether the AFP considered further action should be taken in relation to those officers' conduct. This information is personal information of those officers.
 21. However, I do not consider that the disclosure of this information would be unreasonable. The applicant is already aware of the identity of the three AFP officers, and the nature of the sanction imposed on them. In those circumstances, it is not unreasonable to disclose information about when and how those officers were notified of the sanction, and the AFP's consideration of further action. It may also reassure the applicant that the AFP has taken his allegations seriously, does not tolerate behaviour that is inconsistent with the

AFP Code of Conduct, has imposed an appropriate sanction where a breach has been found, and has taken appropriate steps to ensure the problem will not recur.¹

Findings

22. The information about the three identified officers, that I have found to be relevant to the applicant's request, is not conditionally exempt under s 47F.

Consultation with third parties

23. Section 27A of the FOI Act provides that, where a document includes personal information relating to a person who is not the applicant, that individual (the third party) should be given a reasonable opportunity to make a submission that the document should be exempt from disclosure before a decision to give access is made.²
24. However, s 27A(1)(b) requires such consultation only where it appears to the decision maker that the third party might reasonably wish to make an exemption contention.
25. I have found that personal information about the three AFP officers named in the applicant's FOI request is relevant to the applicant's request. Those officers have not been consulted about the disclosure of that information. Having regard to the matters specified in s 27A(2), it does not appear to me that those officers might reasonably wish to make an exemption contention.

Decision

26. Under s 55K of the FOI Act, I set aside the AFP's decision of 16 March 2012 and decide, in substitution for that decision, that a copy of the minute should be provided to the applicant, modified under s 22 by deleting the following irrelevant information:
 - information about officers not identified in the applicant's request, and
 - information about where officers were working at the time that the minute was written.

James Popple
Freedom of Information Commissioner

6 June 2013

¹ See *J' and Department of Health and Ageing* [2013] AICmr 21 [30], where the documents in dispute related to the outcome of an APS Code of Conduct investigation.

² See Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* [6.143].

Review rights

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal. The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. The current application fee is \$816, which may be reduced or may not apply in certain circumstances. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.