



Mentink and Australian Federal Police **[2014] AICmr 64 (25 June 2014)**

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

Applicant: Wilfred Mentink

Respondent: Australian Federal Police

Decision date: 25 June 2014

Application number: MR11/00372

Catchwords: Freedom of information — Whether giving access would disclose information that would reasonably be regarded as irrelevant to the request — Whether reasonable steps taken to find documents — Whether disclosure would cause damage to international relations of the Commonwealth — whether disclosure would divulge information communicated in confidence by a foreign government — Whether disclosure would disclose law enforcement methods or procedures — Whether documents open to public access as part of a public register — Whether document contains deliberative matter — Whether contrary to public interest to release conditionally exempt document — (CTH) *Freedom of Information Act 1982* ss 11A(5), 12(1)(b), 22, 24A, 33, 37, 47C

Contents

Summary	2
Background	2
Decision under review	4
Translated documents	4
Irrelevant matter (s 22).....	4
Findings	4
Whether reasonable steps taken to find a document (s 24A)	4
Findings	7

Documents affecting national security, defence or international relations exemption (s 33).....	7
Findings	10
Documents affecting enforcement of law and protection of public safety (s 37)	10
Findings	11
Legal professional privilege exemption (s 42)	11
Certain operations of agencies exemption (s 47E)	12
Personal privacy exemption (s 47F).....	12
Documents open to public access as part of a public register (s 12(1)(b)).....	12
Findings	12
Deliberative processes exemption (s 47C).....	12
Findings	13
The public interest test (s 11A(5))	13
Findings	14
Decision.....	15

Summary

- Under s 55K of the FOI Act, I set aside that part of the decision of the Australian Federal Police (the **AFP**) of 31 October 2011 under the *Freedom of Information Act 1982* (the **FOI Act**) relating to pages 57 and 60 and decide, in substitution for that part of the decision, that:
 - page 57 is relevant to the applicant’s request and is exempt in full under s 37(2)(b), and
 - the applicant is not entitled to obtain access to page 60 because it is a document that is open to public access subject to a fee (s 12(1)(b)).

I affirm the remainder of the AFP’s decision.

Background

- Mr Wilfred Mentink was the owner of a yacht called the *Larus II* which he says was stolen from him by Indonesian National Police (**INP**) in 2004.
- On 27 June 2011, Mr Mentink applied to the AFP for access to:

Documents concerning communication between the office of the Registrar of Ships (AMSA, Australia) and the AFP, between July 2004 until the present time, that concern me and/or my rightful property the formerly Registered Australian Ship ‘Larus II’.

Documents concerning communications between the AFP and Indonesian Police in Kupang, Indonesia, between July 2006 and May 2009, that concern me and/or my rightful property the formerly Registered Australian Ship 'Larus II'.

4. The AFP sought, under s 15AA,¹ a 30-day extension of time from Mr Mentink to process his request. On 29 July 2011, Mr Mentink agreed to that extension in writing.
5. On 26 August 2011, the AFP notified Mr Mentink that it required a further 30-day extension of time under s 15(7) for it to consult with a foreign government.
6. On 13 October 2011, the Office of the Australian Information Commissioner (the **OAIC**) granted the AFP a further extension of time to 25 October 2011 under s 15AC.²
7. On 26 October 2011, the extended period expired and, as the AFP had not made a decision on Mr Mentink's request, the AFP was deemed by s 15AC(3) to have made a decision refusing access.
8. On 28 October 2011, Mr Mentink sought IC review of this deemed decision under s 54L.
9. On 31 October 2011, the AFP wrote to Mr Mentink and advised him that it had identified 20 documents within the scope of his request, and provided him with a schedule of documents. The 20 documents comprise 60 folios (pages), which the AFP numbered consecutively across the documents. The AFP used those page numbers to identify the parts of the documents to which it applied exemptions under the FOI Act. I have used those page numbers in these reasons for decision.
10. The AFP released seven pages in full³ and edited copies of 12 pages.⁴ It refused access to the remaining 41 pages. In making this decision, the AFP relied on the national security, defence or international relations exemption (s 33), the law enforcement and public safety exemption (s 37), the legal professional privilege exemption (s 42), the deliberative processes exemption (s 47C), the certain operations of agencies exemption (s 47E), and the personal privacy exemption (s 47F).

¹ Section 15AA provides that an agency may extend the initial 30-day response period (specified in s 15(5)(b)) by a further period of no more than 30 days if the applicant agrees in writing.

² Section 15AC(4) provides that an agency may apply to the Information Commissioner for further time to deal with a request. Under s 15AC(5), the Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency to deal with the request.

³ Pages 50–54 and 58–59.

⁴ Pages 1, 19, 23, 38–40, 46–49, 56 and 60.

Decision under review

11. The decision under review is the decision of the AFP on 31 October 2011, to refuse Mr Mentink access to 53 pages of documents.

Translated documents

12. 18 of the pages⁵ in issue in this IC review are in Indonesian. The AFP has provided English translations of those pages. I have examined unedited copies of the documents and the translations.

Irrelevant matter (s 22)

13. Section 22 of the FOI Act requires an agency to give an applicant access to an edited copy of a document that contains information irrelevant to the applicant's request, with that irrelevant information (and any exempt material) deleted, if reasonably practicable.
14. The AFP decided that page 57 was irrelevant in full and page 56 irrelevant in part; it provided Mr Mentink with an edited copy of page 56 with the irrelevant information deleted.
15. I have examined unedited copies of these two pages. I agree with the AFP that the information that it deleted from page 56 is irrelevant to Mr Mentink's request. However, I do not agree that page 57 is irrelevant to the request. Page 57 contains personal information and other information about Mr Mentink and is an extract from the Australian Register of Ships maintained by the Australian Maritime Safety Authority (**AMSA**).

Findings

16. The material the AFP deleted from page 56 under s 22 of the FOI Act is irrelevant to Mr Mentink's request. Page 57 is not irrelevant to that request. (I consider below the application of s 37(2)(b) to page 57.⁶)

Whether reasonable steps taken to find a document (s 24A)

17. Section 24A(1) of the FOI Act provides:

Request may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and

⁵ Pages 2–4, 8–9, 12–15, 20–21, 24–26, 30–31, 34 and 36

⁶ See [42] and [44] below.

- (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found;
or
 - (ii) does not exist.

18. Mr Mentink questions whether the AFP took all reasonable steps to find documents within scope of his request.
19. The Australian Information Commissioner has issued Guidelines under s 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. The Guidelines explain that:

The FOI Act is silent about what an agency or minister must do in terms of searching for documents that may be relevant to a request. Agencies should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's environment. At a minimum, an agency or minister should take comprehensive steps to locate a document, having regard to:

- the subject matter of the documents
- the current and past file management systems and the practice of destruction or removal of documents
- the records management systems in place
- the individuals within an agency who may be able to assist with the location of documents and
- the age of the documents.

...

The Information Commissioner considers that, as a minimum, an agency should conduct a search by using existing technology and infrastructure to conduct an electronic search of documents, as well as making enquiries of those who may be able to help locate the documents.⁷

20. On 28 November 2011, Mr Mentink wrote to the OAIC questioning the adequacy of the searches that the AFP conducted for documents falling within the scope of his request. He has given a number of reasons why he believes that the AFP must have additional documents within the scope of his request. These reasons include:

'AMSA has disclosed that on 5 November and 1 December 2004 it had contact with the AFP regarding alleged fraud against the Commonwealth in respect to my vessel Larus II. The AFP failed to disclose any record of this contact.

⁷ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982*, [3.54–3.56], footnotes omitted.

ACLEI [the Australian Commission for Law Enforcement Integrity] has disclosed an AFP document dated 28 September 2007. No other document of this genre appears in the AFP documents provided to ACLEI. The purpose of providing the document to ACLEI appears to be to establish that rather than the vessel being stolen, it was sold. The document is likely to be a reply to folios 49–50 dated 25 September 2007 and the last of a series of similar documents the earliest of which is dated 14 February 2007. Evidence suggests somewhat earlier AFP–INP contact, and ongoing contact in 2008, none of which was disclosed.’

‘Folio 51 records that on 27 July 2005 the AFP contacted AMSA for information as to any yachts registered in the name Mentink.

A fax was sent on the following day—folio 52. A page 2 seems not to have been disclosed.

AMSA’s emailed reply appears under a ‘case note’: folio 53. A second page is folio 54.

The 2005 inquiry came from the AFP Brisbane office, perhaps directly from TSETT [Transnational Sexual Exploitation and Trafficking Team]. No document appears to disclose the reason for the inquiry.’

‘TSETT ... inquired again on 14 February 2007. The email/fax inquiry sent to AMSA was not disclosed by the decision, only AMSA’s faxed reply: folio 56.’

‘If folio 55 is not the letter from the AFP requesting information from AMSA, then where is that letter/request?’

‘It is inconceivable that no record of communication should exist between INP and the AFP concerning me during the period early 2008 until at least mid 2009.’

‘[I]n late 2004 ... AMSA contacted the AFP in a fruitless attempt to report alleged fraud by the person who stole my vessel. The Registrar of Ships found himself dealing with the head of TSETT. The AFP has not disclosed any record of that contact.’

21. The AFP submits that the searches it conducted at the time of Mr Mentink’s FOI request were adequate and identified all documents within scope of the request. The AFP has conducted further electronic searches at Mr Mentink’s request. Additional enquiries were made to the TSETT (now known as Child Protection Operations) and the AFP liaison post in Bali.
22. I have considered the AFP’s submissions, in particular the following information it provided about steps it took to identify documents within the scope of Mr Mentink’s request:
 - search of the PROMIS [database] for Mr Mentink’s surname, given name and derivatives (use of middle initials and middle names) on 27 September 2011. This search identified a person and approximately 285 individual log entries. The log entries were in the date range of 2000–2011.
 - searches were conducted by the SLO [Senior Liaison Officer] Bali included physical hard file searches and searches of diary entries and notes.

- similar physical searches were made by TSETT who provided the diary notes of the police officers and confirmed that all information contained on the hard file had been uploaded into PROMIS.
 - additional advanced text searches were conducted on 8 May 2013 of the PROMIS database to identify the documents dated 5 November and 1 December 2004 referred to by Mr Mentink. The additional searches were conducted using the date range 1 November to 31 December 2004. Thirteen entries were identified for this period. Each entry was opened and assessed. No entry was identified as referred to by Mr Mentink. A further broadened search was unsuccessful in identifying the two documents referred to by Mr Mentink.
23. The AFP says that, although its searches identified four documents from 2008, none was within scope of the request. Those four documents are correspondence from Mr Mentink via the office of a former MP. The AFP says that none of these documents is a communication between the AFP and AMSA or between the AFP and the INP.

Findings

24. For the purposes of s 24A(1), I am satisfied that the AFP has taken all reasonable steps to find documents within the scope of Mr Mentink's request, and that such documents, other than those already identified, do not exist or cannot be found.

Documents affecting national security, defence or international relations exemption (s 33)

25. Section 33 of the FOI Act relevantly provides:

Documents affecting national security, defence or international relations

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; or
- (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.

26. In relation to s 33(a)(iii), the Guidelines explain:

The phrase ‘international relations’ has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between government agencies.

... The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the conclusion that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.⁸

27. In relation to the term ‘would or could reasonably be expected’, the Guidelines explain:

The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.⁹

28. The Guidelines also explain:

Section 33(b) exempts information communicated in confidence to the Australian Government or agency by another government or one of its authorities, or by an international organisation. One example is the confidential exchange of police information or information received from a foreign defence force agency.

The test is whether information is communicated in confidence between the communicator and the agency to which the communication is made—it is not a matter of determining whether the information is of itself confidential in nature. Information is communicated in confidence by or on behalf of another government or authority, if it was communicated and received under an express or implied understanding that the communication would be kept confidential. Whether the information is, in fact, confidential in character and whether it was communicated in circumstances importing an obligation of confidence are relevant considerations. They may assist the decision maker to determine whether, on the balance of probabilities, information was communicated in confidence.¹⁰

⁸ *Guidelines* [5.30]–[5.31], footnotes omitted.

⁹ *Guidelines* [5.13]–[5.14], footnotes omitted.

¹⁰ *Guidelines* [5.35]–[5.36], footnotes omitted.

29. The AFP decided that the international relations exemption applied to 39 pages in full,¹¹ and 10 pages in part.¹² In its reasons, the AFP said that s 33(a)(iii) applied because the documents contain:
- information provided by an agency of a foreign government. The information was provided to the AFP by a foreign government for reference for investigative purposes on the understanding that it would only be used for that purpose and not be disseminated further.
30. In submissions to the OAIC on 10 May 2013, the AFP said:
- The documents seek operational enquires to be conducted by the Indonesian Police ... The nature of these documents indicates that the disclosure of the documents would be regarded as a breach of trust [by Indonesia] and would affect the willingness of its law enforcement agencies to share investigative materials with the AFP in the future.
31. Mr Mentink says that it ‘appears quite inconceivable’ that the disclosure of information about his presence in Indonesia could cause damage to the international relations of the Commonwealth. Having examined the documents, I disagree. I think that it is not only conceivable, but foreseeable, that disclosure of shared police intelligence concerning Mr Mentink’s activities and movements in Indonesia could affect relations between the AFP and the INP. I agree with the AFP that disclosure of this information could be seen as a breach of trust by the Indonesian authorities.
32. In relation to its application of s 33(b), the AFP submitted that the documents 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 future supply of information to the AFP.
33. Mr Mentink argues that the AFP were the dominant party in investigations concerning him and that the ‘INP had absolutely no reason to be concerned’ about his conduct in Indonesia. He also says that letters from the AFP to the INP cannot be regarded as information communicated in confidence by the INP to the AFP, unless information communicated by the AFP to the INP would divulge information communicated by the INP to the AFP.
34. This latter point is correct: information communicated by the AFP to the INP—so long as it does not restate information previously communicated in the other direction—cannot be characterised as information communicated in confidence by the INP to the AFP.

¹¹ Pages 2–18, 20–22, 24–37 and 41–45.

¹² Pages 1, 19, 23, 38–40 and 46–49.

35. I have examined unedited copies of the 21 pages exempted in full,¹³ and the 10 pages exempted in part¹⁴ under either or both of ss 33(a)(iii) and 33(b). They are overseas liaison communications—communications from the AFP to Indonesian authorities and communications from the INP to the AFP—concerning Mr Mentink’s activities. I am satisfied that, for each communication:
- its disclosure could reasonably be expected to damage relations between the AFP and the INP, and/or
 - it was provided to the AFP by Indonesian authorities in confidence.

Findings

36. The documents and parts of documents that the AFP decided were exempt under s 33 are exempt under that provision.

Documents affecting enforcement of law and protection of public safety (s 37)

37. Section 37(2) of the FOI Act relevantly provides:

Documents affecting enforcement of law and protection of public safety

...

- (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; or
- (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

38. The Guidelines explain that:

This exemption [s 37(2)(b)] requires satisfaction of two factors. There must be a reasonable expectation that a document will disclose a method or procedure and a reasonable expectation or a real risk of prejudice to the effectiveness of that investigative method or procedure. If the only result of disclosing the methods would be that those methods were no surprise to anyone, there could be no reasonable expectation of prejudice.¹⁵

¹³ Pages 5-7, 10-11, 16-18, 22, 27-29, 32-33, 35, 37 and 41-45.

¹⁴ Pages 1, 19, 23, 38-40 and 46-49.

¹⁵ *Guidelines* [5.101].

39. The AFP applied s 37(2)(b) to page 55, which is an AFP case note. The AFP said in its reasons for decision that disclosure of this information would be reasonably likely to prejudice the effectiveness of AFP methods and procedures that are not well known.
40. Mr Mentink challenges the AFP's claim that those methods or procedures are not generally known, saying it would be highly unlikely that the AFP would be able to keep such methods or procedures secret indefinitely. Mr Mentink argues that the methods or procedures used by the AFP in July 2005, when page 55 was written, would by now have been disclosed through crime series on television.
41. I have examined an unedited copy of page 55. It notes two procedures that had been undertaken by the AFP. I accept the AFP's argument that these procedures are not well known. There is no evidence before me that suggests that these procedures have been disclosed publically either by the AFP or through television crime series. I am satisfied that disclosure of the information contained on page 55 would be reasonably likely to prejudice the effectiveness of AFP procedures.
42. Page 57 is a record of a database search. The AFP decided that page 57 was irrelevant to Mr Mentink's request, but I have decided that it is relevant.¹⁶ I am satisfied that disclosing details of the database search that resulted in page 57 would be likely to prejudice the effectiveness of the AFP's methods or procedures. I am also satisfied that those methods or procedures are not widely known, so that there would be a reasonable expectation of prejudice to the AFP procedures if page 57 were disclosed.

Findings

43. The parts of page 55 that the AFP decided were exempt under s 37(2)(b) are exempt under that provision.
44. Page 57 is exempt under s 37(2)(b).

Legal professional privilege exemption (s 42)

45. The AFP exempted some material on pages 41–45 under s 42(1) of the FOI Act. Because I have decided that that material is exempt under s 33,¹⁷ there is no need for me to consider the application of the legal professional privilege exemption to those pages.

¹⁶ See [15] above.

¹⁷ See [25]–[36] above.

Certain operations of agencies exemption (s 47E)

46. The AFP exempted some material on page 55 under s 47E of the FOI Act. Because I have decided that that material is exempt under s 33,¹⁸ there is no need for me to consider the application of the certain operations of agencies exemption to that page.

Personal privacy exemption (s 47F)

47. The AFP exempted some material on 10 pages¹⁹ under s 47F of the FOI Act. In relation to nine of those pages, I have decided that that material is exempt under s 33;²⁰ there is no need for me to consider the application of the personal privacy exemption to those pages. The remaining page is page 60.

Documents open to public access as part of a public register (s 12(1)(b))

48. Page 60 is the result of a search of the Australian Register of Ships relating to the yacht *Larus II*. The information that the AFP says is exempt under s 47F is the address of a party to the sale of that yacht who is not Mr Mentink.
49. Section 12(1)(b) of the FOI Act provides that a person is not entitled to obtain access to a document that is open to public access as part of a public register where that access is subject to a fee or charge. The Australian Register of Ships is maintained by AMSA. According to the AMSA website, the register may be inspected during business hours at the Australian Shipping Registration Office.²¹ A search of the register can be conducted by staff of the Shipping Registration Office on behalf of persons who cannot inspect the register themselves. Fees are payable.

Findings

50. Page 60 is a document to which s 12(1)(b) of the FOI Act applies. Mr Mentink is not entitled to obtain access to it. There is no need to consider the application of s 47F to page 60.

Deliberative processes exemption (s 47C)

51. Section 47C(1) of the FOI Act relevantly provides:

Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to,

¹⁸ See [25]–[36] above.

¹⁹ Pages 10–11, 16–18, 22, 27–29 and 60.

²⁰ See [25]–[36] above.

²¹ See <http://www.amsa.gov.au/vessels/shipping-registration/australian-general-register/inspection-and-search-of-the-register/>.

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:

(a) an agency; ...

52. As the Guidelines explain:

... the deliberative processes involved in the functions of an agency are its thinking processes—the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.²²

53. The AFP exempted some material on page 19 under s 47C. Because I have decided that that material is exempt under s 33,²³ there is no need for me to consider the application of the deliberative processes exemption to that page.

54. The AFP decided that the deliberative processes exemption applied to the third and fourth sentences of paragraph 3 on page 38.

55. The Guidelines explain that deliberative matter can be content that is in the nature of a consultation or deliberation that has taken place.²⁴ It does not include operational information or purely factual material (s 47C(2)).²⁵

56. I have examined page 38. The material in dispute is the expression of an opinion by an AFP TSETT officer to AFP officers in Bali about ongoing investigations. The opinion does not include operational information or purely factual material.

Findings

57. Because of the third and fourth sentences of paragraph 3, page 38 is conditionally exempt under s 47C of the FOI Act.

The public interest test (s 11A(5))

58. I have found that page 38 is conditionally exempt under s 47C of the FOI Act. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed 'unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest'. As the Guidelines explain, '[t]he pro-disclosure principle declared in the objects of the FOI Act is given specific effect in the public interest test, as the test is weighted towards disclosure'.²⁶

²² *Guidelines* [6.62], footnotes omitted.

²³ See [25]–[36] above.

²⁴ *Guidelines* [6.56].

²⁵ *Guidelines* [6.57]. 'Operational information' is defined in s 8A.

²⁶ *Guidelines* [6.12].

59. Of the factors favouring disclosure set out in s 11B(3), one is relevant to this IC review: promoting the objects of the FOI Act. The Guidelines include a non-exhaustive list of further factors that favour disclosure.²⁷ One of those factors is relevant to this IC review: disclosure would enhance scrutiny of government decision making.
60. However, the opinion expressed on page 38 is preliminary and relatively general in character. It is also the personal view of an AFP officer, not a settled AFP position. I give a low weight to this factor favouring disclosure.
61. Against this factor must be balanced factors against disclosure. The FOI Act does not specify any factors against disclosure, but the Guidelines include a non-exhaustive list of such factors.²⁸ One of those factors is relevant to this IC review: disclosure could reasonably be expected to 'prejudice security, law enforcement, public health or public safety'. The AFP submitted, and I accept, that in carrying out their law enforcement duties, AFP officers deliberate on matters under investigation. The AFP says that disclosing this information would prejudice the AFP's ability to conduct investigations.
62. Mr Mentink says that the AFP documents are 'absolutely riddled with potential foul play on the part of the AFP' and argues that there is a strong public interest in exposing its conduct. Even if these allegations were well founded—and there is nothing in the documents that I have seen to suggest that they are—s 11A(5) requires me to answer a narrow question: whether giving Mr Mentink access to the third and fourth sentences of paragraph 3 on page 38 would be contrary to the public interest.
63. In balancing these factors—for and against disclosure—I give the greatest weight in this IC review to the factor against disclosure.

Findings

64. Giving Mr Mentink access to the third and fourth sentences of paragraph 3 on page 38 would, on balance, be contrary to the public interest.

²⁷ *Guidelines* [6.25].

²⁸ *Guidelines* [6.29].

Decision

65. Under s 55K of the FOI Act, I set aside that part of the AFP's decision of 31 October 2011 relating to pages 57 and 60 and decide, in substitution for that part of the decision, that:

- page 57 is relevant to Mr Mentink's request and is exempt in full under s 37(2)(b), and
- Mr Mentink is not entitled to obtain access to page 60 because it is a document to which s 12(1)(b) applies.

I affirm the remainder of the AFP's decision.

James Popple
Freedom of Information Commissioner

25 June 2014

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.