



AFP
AUSTRALIAN FEDERAL POLICE

Our ref: CRM 2019/400

24 April 2019

Mr John Power
By email: john.power@scmp.com

Dear Mr Power,

Freedom of Information request

I refer to your application dated 21 January 2019, under *the Freedom of Information Act 1982* (the Act) seeking the following:

“All written correspondence between the AFP and Interpol concerning the case of Hakeem Al-Araibi.”

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,

Helen Drew
Coordinator
Freedom of Information Team
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
JOHN POWER**

I, Helen Drew, 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 21 January 2019, this office received your application in which you requested:

“All written correspondence between the AFP and Interpol concerning the case of Hakeem Al-Araibi.”

On 21 March 2019, a further extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AC of the Act to notify you of a decision by 22 March 2019.

I understand this request is now overdue and I apologise for any inconvenience caused by the delay.

SEARCHES

In relation to this request, searches were undertaken by the International Operations Portfolio for documents within scope.

WAIVER OF CHARGES

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*.

DECISION

I have identified 7 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 with deletions pursuant to subsections 22(1)(a)(ii), 33(a)(iii), 33(b), and 47F of the Act. Some of the documents that relate to your request are exempt in full, pursuant to subsections 33(a)(iii) and 33(b) of the Act.

My reasons for this decision are set out below.

REASONS FOR DECISION

Folios to which subsection 22(1)(a)(ii) applies:

Subsection 22(1)(a)(ii) of the Act provides that:

“(1) Where:

- (a) *an agency or Minister decides:*
- (ii) *that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request;"*

The parts of the documents identified in the Schedule as exempt under this section of the Act contain information which is considered irrelevant to the request. I have determined that information contained in some of the folios should be deemed to be exempt because it does not come within the scope of your application and thus falls outside the ambit of your request. By way of further explanation, these exempt folios cover information which refers to other issues which are not mentioned in your FOI application or which you have agreed to exclude from the scope of your request. For example, you agreed to exclude the names of AFP members, other than the Senior Executive, and direct telephone numbers, signatures and mobile telephone numbers of AFP members.

I therefore have found that those parts of the would be reasonably be regarded as irrelevant to the request under subsection 22(1)(a)(ii) of the Act.

Folios to which subsection 33(a)(iii) applies:

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 contain information relating to or provided by a foreign government. I am satisfied that the information provided by the foreign governments was on a confidential basis, and the release of the information could reasonably be expected to cause damage to the future cooperation and exchange of information between the AFP and its law enforcement counterparts in that country. I am also satisfied that the documents or parts of the documents in question contain information, which, if released, could reasonably be expected to inhibit future cooperation and cause damage to the international relations of the Commonwealth.

I am satisfied that the documents are exempt from disclosure under subsection 33(a)(iii) of the Act.

Folios to which subsection 33(b) applies:

Subsection 33(b) of the Act provides that:

- "A document is an exempt document if disclosure of the document under this Act:*
- ...
 - (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."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information provided by a foreign government and an international organisation, being Interpol, to the AFP. In both cases, this information was provided on an understanding of confidentiality. Disclosure would be a breach of that confidence and could potentially harm the future supply of information to the AFP and ongoing cooperation between the AFP, Interpol and other international law enforcement partners. I am satisfied that to grant access to the documents would divulge information communicated in confidence to the AFP by an international organisation and a foreign government.

I find that the documents or parts of the documents are exempt from disclosure under subsection 33(b) of the Act.

Folios to which section 47F applies:

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 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 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 to the protection of an individual's right to privacy;
- (h) the fact that the information exempted under this section of the Act is not on the public record or available from publicly accessible sources; and
- (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.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (g) to (i) above and conclude that on balance, disclosure is not in the public interest.

I find that the release of parts of the 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*; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

**** YOU SHOULD READ THIS GENERAL ADVICE IN CONJUNCTION WITH THE LEGISLATIVE REQUIREMENTS OF THE FREEDOM OF INFORMATION ACT 1982.**

REVIEW AND COMPLAINT RIGHTS

If you are dissatisfied with a Freedom of Information decision made by the Australian Federal Police, you can apply for an internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking an IC review.

You do not need to seek a review by either the AFP or the IC should you wish to complain about the AFP's actions in processing your request.

REVIEW RIGHTS under Part VI of the Act

Internal Review by the AFP

Section 53A of the Act gives you the right to apply for an internal review in writing to the Australian Federal Police (AFP) within 30 days of being notified of a decision. No particular form is required. It would assist the independent AFP decision-maker responsible for the internal review if you set out in the application, the grounds on which you consider that the decision should be reviewed.

Section 54B of the Act provides that the internal review submission must be made within 30 days. Applications for a review of the decision should be addressed to:

Freedom of Information
Australian Federal Police
GPO Box 401
Canberra ACT 2601

REVIEW RIGHTS under Part VII of the Act

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 by the AFP. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision. It would also help if you set out the reasons for review in your application.

Section 54S of the Act provides for the timeframes for an IC review submission. For an *access refusal decision* covered by subsection 54L(2), the application must be made within 60 days. For an *access grant decision* covered by subsection 54M(2), the application must be made within 30 days.

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

Office of the Australian Information Commissioner
GPO Box 5128
Sydney NSW 2001

Further, the OAIC encourages parties to an IC review to resolve their dispute informally, and encourages agencies to consider possible compromises or alternative solutions to the dispute in this matter. The AFP would be pleased to assist you in this regard.

Information about the IC review process can be found in Part 10 of the Guidelines which are available on our website at <http://www.oaic.gov.au/publications/guidelines.html>.

RIGHT TO COMPLAIN under Part VIIB of the Act

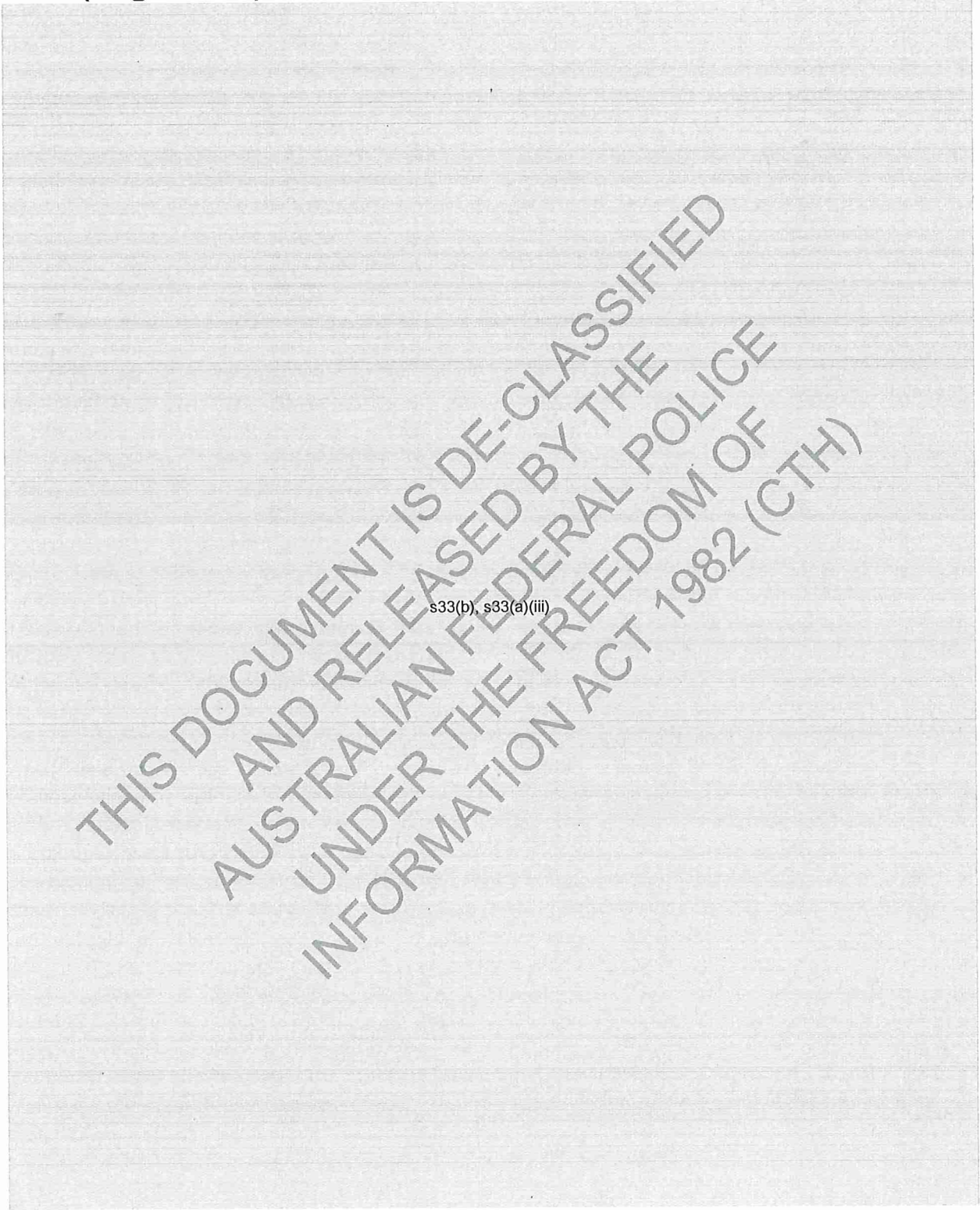
Section 70 of the Act provides that a person may complain to the IC about action taken by the Australian Federal Police in relation to your application.

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.

Document No	Folio #	Section	Description
1	1-2	s33(b), s33(a)(iii)	Document released with deletions
2	3-4	s33(a)(iii), s33(b)	Document exempt in full
3	5-10	s47F, s33(b), s22(1)(a)(ii), 33(a)(iii)	Document released with deletions
4	11-13	s33(b), s33(a)(iii)	Document exempt in full
5	14	s33(b), s33(a)(iii)	Document exempt in full
6	15-16	s33(b), s33(a)(iii)	Document exempt in full
7	17-18	s47F, s33(b), s22(1)(a)(ii),	Document released with deletions

s33(b) (Log No. 10)



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s33(b), s33(a)(iii)

s33(b), s33(a)(iii)

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s33(a)(iii), s33(b)

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INTERPOL INT OUT : ALARAIBI - 14. EMAIL TO IPSTG NOTICES & DIFUSIONS TASK FORCE - ENQ BEING MADE (Log No. 23)

From: INTERPOL Canberra

Sent: Friday, 30 November 2018 8:17 AM

To: Notices and Diffusions Task Force

Cc: INTERPOL Canberra

Subject: 6281438/65 - Red Notice against the individual ALARAIBI f/n Hakeem

s47F

s47F

- File number:

s33(b)

[SEC=INTERPOL For Official Use Only]

Importance: High

INTERPOL For Official Use Only

TO: Office of Legal Affairs – INTERPOL General Secretariat

FROM: INTERPOL Canberra

PRIORITY: Urgent

YOUR REF: s47F

OUR REF: 6281438/65

SUBJECT: Red Notice against the individual ALARAIBI f/n Hakeem

s47F

D.O.B.: s47F – File number: s33(b)

Dear colleagues,

INTERPOL Canberra takes this opportunity to extend its compliments to Office of Legal Affairs – INTERPOL General Secretariat.

Please be advised that our Bureau is currently conducting urgent enquiries with the relevant Australian authorities to confirm the refugee status of Mr ALARAIBI.

INTERPOL Canberra will advise you of the results of our enquiries as they become available.

As always, your ongoing support and commitment to INTERPOL Canberra is greatly appreciated.

Best regards / Meilleures salutations / Muy atentamente / مع أطيب التحيات

s22(1)(a)(ii)

This document contains Australian Federal Police (AFP) or partner agency information that is security classified by the Australian Government and is subject to secrecy and/or privacy laws. This information may only be used for official purposes of the recipient and must not be disclosed to another agency or third party without the prior written consent of NCB Canberra. The recipient must ensure appropriate security measures

INTERPOL NAT OUT : ALARAIBI - 20. EMAIL TO A./CIE WITH LATEST EMAIL SENT TO OFFICE OF LEGAL AFFAIRS THIS AFTERNOON AS REFERENCE FOR A/CIE s22(1)(a)(ii) AS REQUESTED. (Log No. 29)

From: INTERPOL Canberra

Sent: Friday, 30 November 2018 9:34 PM

To: s22(1)(a)(ii)

Subject: FW: ****URGENT**** 6281438/65 - Red Notice against the individual ALARAIBI f/n Hakeem s47F
s47F – File number: s33(b) [SEC=INTERPOL For Official Use Only]

Importance: High

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FYI

s22(1)(a)(ii)

www.afp.gov.au



POLICING FOR
A SAFER AUSTRALIA

INTERPOL For Official Use Only

From: INTERPOL Canberra

Sent: Friday, 30 November 2018 3:03 PM

To: Notices and Diffusions Task Force s33(a)(iii)

Cc: INTERPOL Canberra

Subject: ****URGENT**** 6281438/65 - Red Notice against the individual ALARAIBI f/n Hakeem s47F
s47F – File number: s33(b) [SEC=INTERPOL For Official Use Only]

Importance: High

INTERPOL For Official Use Only

TO: Office of Legal Affairs – INTERPOL General Secretariat

FROM: INTERPOL Canberra

PRIORITY: Urgent

YOUR REF: s33(b)

OUR REF: 6281438/65

SUBJECT: Red Notice against the individual ALARAIBI f/n Hakeem s47F

s47F – File number: s33(b)

Dear colleagues,

INTERPOL Canberra takes this opportunity to extend its compliments to Office of Legal Affairs – INTERPOL General Secretariat.

Further to our correspondence below, the Australian Department of Home Affairs has confirmed Mr ALARAIBI was granted an Australian permanent protection 47F visa s47F and remains the holder of that visa. s47F

s47F Under the Australian Migration Act 1958, Mr ALARAIBI is considered to be a refugee.

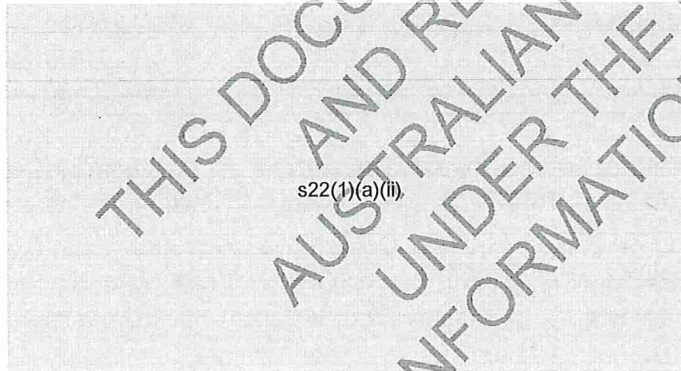
Further, the Australian Department of Home Affairs have advised the information with regards to Mr ALARAIBI's status in Australia as a refugee may be shared with INTERPOL General Secretariat Office of Legal Affairs to assist in their review of the validity of the INTERPOL Red Notice issued by authorities in Bahrain.

s 33(a)(iii)
s 33(a)(iii) s 47F As Australian authorities have assessed Mr ALARAIBI as engaging Australia's protection obligations, it would **not** be appropriate to confirm with INTERPOL member countries s 33(a)(iii) that Mr ALARAIBI has been granted a permanent protection visa. It would, however, be permissible to advise INTERPOL member countries that "Mr ALARAIBI is the holder of an Australian permanent residence visa".

We hope that this information is of assistance to the Office of Legal Affairs in assessing the legal compliance of the INTERPOL Red Notice issued for Mr ALARAIBI and request that INTERPOL Canberra be advised in due course of the outcome of any review.

As always, your ongoing support and commitment to INTERPOL Canberra is greatly appreciated.

Best regards / Meilleures salutations / Muy atentamente / مع أطيب التحيات



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From: INTERPOL Canberra
Sent: Friday, 30 November 2018 8:17 AM
To: Notices and Diffusions Task Force

Cc: INTERPOL Canberra

Subject: 6281438/65 - Red Notice against the individual ALARAIBI f/n Hakeem s47F D.O.B.

s47F - File number: s33(b) [SEC=INTERPOL For Official Use Only]

Importance: High

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TO: Office of Legal Affairs – INTERPOL General Secretariat

FROM: INTERPOL Canberra

PRIORITY: Urgent

YOUR REF: s33(b)

OUR REF: 6281438/65

SUBJECT: Red Notice against the individual ALARAIBI f/n Hakeem s47F

s47F - File number: s33(b)

Dear colleagues,

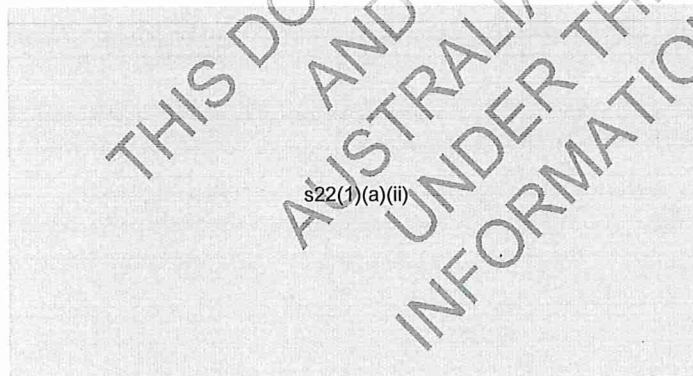
INTERPOL Canberra takes this opportunity to extend its compliments to Office of Legal Affairs – INTERPOL General Secretariat.

Please be advised that our Bureau is currently conducting urgent enquiries with the relevant Australian authorities to confirm the refugee status of Mr ALARAIBI.

INTERPOL Canberra will advise you of the results of our enquiries as they become available.

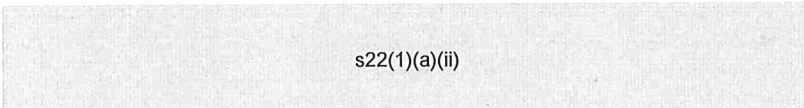
As always, your ongoing support and commitment to INTERPOL Canberra is greatly appreciated.

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s22(1)(a)(ii)

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s22(1)(a)(ii)

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**INTERPOL INT IN : INFO FROM IPGS RE NOTICES AND
DIFFUSIONS (15 DEC 2018) (Log No. 100)**

From: Notices and Diffusions Task Force [redacted] s33(a)(iii)

Sent: Saturday, 15 December 2018 2:15 AM

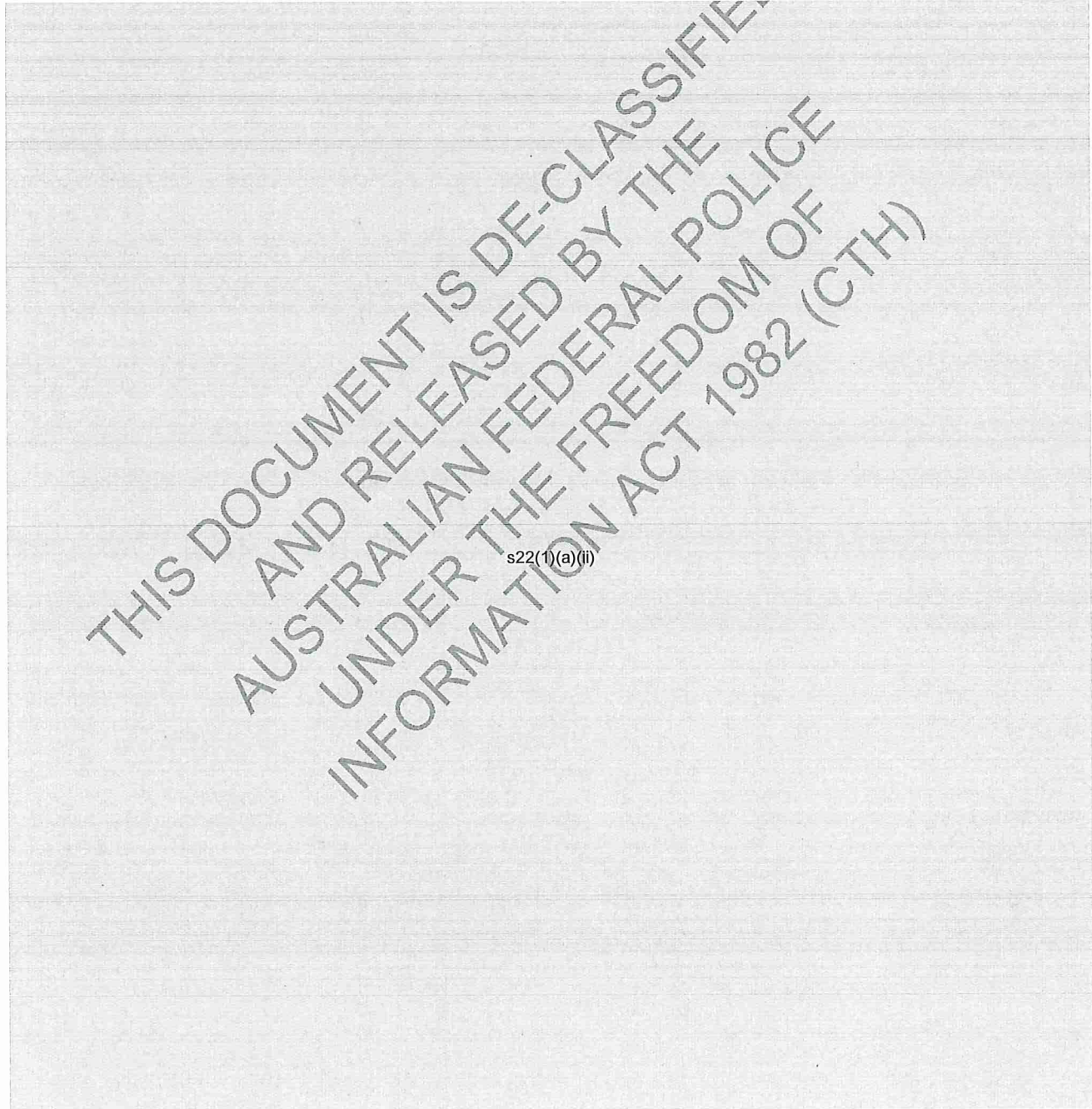
To: NCB CANBERRA Australia

Subject: FW: 6281438/65 - Red Notice against the individual ALARAIBI f/n Hakeem [redacted] s47F

D.O.B. [redacted] s47F – File number: [redacted] s33(b) [SEC=INTERPOL For Official Use Only] [DLM=For-Official-Use-Only] [For official use]

Importance: High

Confidentiality Level : INTERPOL For official use only



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s22(1)(a)(ii)

s22(1)(a)(ii)

From: NCB CANBERRA Australia

Sent: vendredi 14 décembre 2018 00:49

To: Notices and Diffusions Task Force

s33(b)

Cc: INTERPOL Canberra s22(1)(a)(ii) @afp.gov.au>

Subject: RE: 6281438/65 - Red Notice against the individual ALARAIBI f/n Hakeem s47F D.O.B.

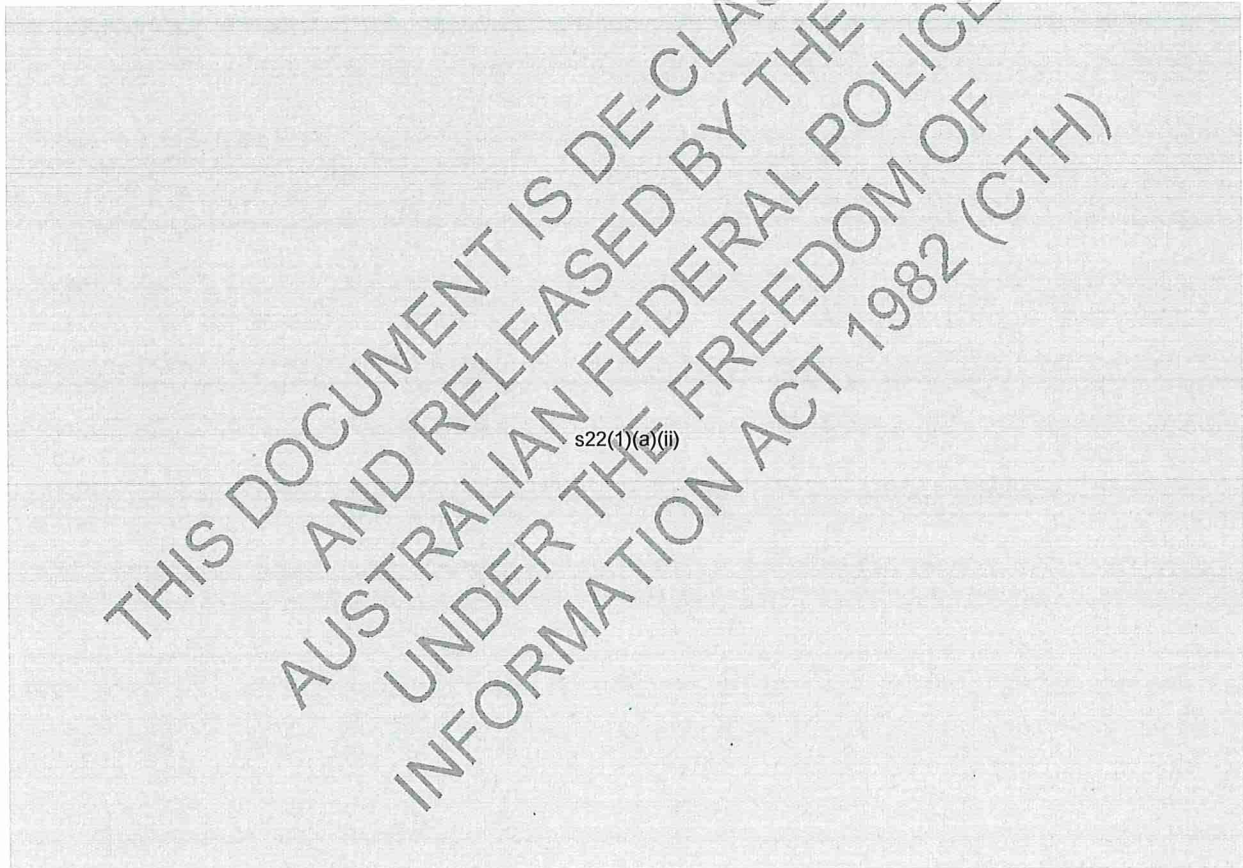
s47F File number s33(b) [SEC=INTERPOL For Official Use Only] [DLM=For-Official-Use-Only]

Importance: High

For-Official-Use-Only

Dear Colleagues,

We would like to extend our appreciation for your swift consideration of the information we provided and subsequent cancellation of this Notice. We accept that IPSP had no knowledge of the refugee status of the subject until raised by the media and then confirmed through our NCB. Once IPSP was made aware, the Notice was reviewed in accordance with the INTERPOL Refugee Policy and subsequently cancelled.



s22(1)(a)(ii)

Regards

s22(1)(a)(ii)

NCB Canberra