



AFP
AUSTRALIAN FEDERAL POLICE

Our ref: CRM 2019/665

3 July 2019

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

Dear Mr Power,

Freedom of Information request

I refer to your application dated 7 June 2019, under *the Freedom of Information Act 1982* (the Act) seeking the following:

All talking points, including drafts, and edited and deleted versions, describing the AFP acting dependently from the government in its execution of a search warrant on the ABC on June 5.

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)

It has been decided to publish the documents in part in respect of your request. Publication of the documents and any relevant documents will be made on the AFP website at <http://www.afp.gov.au/about-the-afp/information-publication-scheme/routinely-requested-information.aspx> in accordance with timeframes stipulated in section 11C of the Act.

The execution of the search warrant(s) which are the subject of your request has generated significant media interest. The AFP intends to publish all material that has been released in response to other FOI requests about this subject on the AFP Disclosure Log. You may wish to check the IPS for further material of relevance.

Yours sincerely,

Tom McBride
Acting Coordinator
Freedom of Information Team
Chief Counsel Portfolio

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

I, Tom McBride, Acting 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 7 June 2019, this office received your application in which you requested:

All talking points, including drafts, and edited and deleted versions, describing the AFP acting dependently from the government in its execution of a search warrant on the ABC on June 5.

SEARCHES

In relation to this application, a search was undertaken by AFP Crime Operations, Legal, Ministerial, the Executive and National Media for documents relating to the search warrants executed on 5 June 2019 as outlined in the scope of your request.

WAIVER OF CHARGES

Given that the request has totalled only 35 pages, I am waiving any further fees and charges which are normally associated with the processing of applications under the Act.

DECISION

I have identified eight 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 documents that relate to your request are released with deletions pursuant to subsection 22(1)(a)(ii) and 47C of the Act. Some of the documents that relate to your request are exempt in full, pursuant to subsection 22(1)(a)(ii) 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 documents or parts of 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 not objected to exclude from the scope of your request. For example, the names of AFP members, other than the Senior Executive, and direct telephone numbers, signatures and mobile telephone numbers of AFP members have been redacted.

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

Folios to which section 47C applies:

Section 47C of the Act provides that:

*“(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, 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 an agency or Minister or of the Government of the Commonwealth.”*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information, the release of which, is exempt on the grounds that it is an internal working document of the AFP. Provision of these folios would disclose matter in the nature of consultation and deliberation that has taken place for the purposes of the deliberative processes involving the operational functions of the Australian Federal Police.

Further, the document records advice, recommendations and opinion in material prepared by the AFP during which time members were required to communicate directly, freely and confidentially on issues which are considered to be sensitive.

There is also public interest in protecting the integrity of the decision-making process by separating the final decision-making policy or policy making steps and the reasons therefore from the opinions and advice of the officials who contributed to the consideration.

Subsection 47C(2) provides that:

*“...
(2) Deliberative matters does not include either of the following:
(a) operational information (see section 8A);
(b) purely factual material.*

As the opinion in this information involved analysis of the facts of the review to form a judgement, I am satisfied that this information is not purely factual material and therefore is not excluded under subsection 47C(2) of the Act.

I have considered the public interest factors both in favour and against disclosure of the information in these folios to determine whether disclosure would be contrary to the public interest.

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; 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) if such information was disclosed, it would restrict the ability of AFP employees in future to record their opinions directly, freely and confidentially during an investigation process;
- (d) disclosure would prejudice the agency's ability to form an analysis and present its recommendations in relation to law enforcement investigations; and
- (e) that if information concerning the documents was revealed, it may compromise the AFP's operations and damage relations with external stakeholders.

I have considered the public interest factors both in favour and against disclosure and in my view, in relation to these documents, the factors at (c), (d) and (e) against disclosure outweigh the factors in favour of disclosure. I find that release of the documents or parts of the documents would be an unreasonable disclosure under section 47C 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.

SCHEDULE OF DECISION – JOHN POWER – CRM 2019/665

Document	Folio #	Description	Exemption
1	1-6		Released in full
	7		s22(1)(a)(ii) Exempted material would disclose information that would reasonably be regarded as irrelevant to the request.
	8	s22(1)(a)(ii)	
	9	S22(1)(a)(ii)	
	10	Folio exempt in full: s22(1)(a)(ii)	
	11	Folio exempt in full: s22(1)(a)(ii)	
	12	Folio exempt in full: s22(1)(a)(ii)	
2	13-14		Released in full
3	15-16		Released in full
4	17-18		Released in full
5	19-20		Released in full
6	21		s47C To grant access to the document would disclose information in the nature of or relating to opinion, advice or recommendation obtained/prepared in the course of the deliberative processes of an agency. Access must be given unless it would be contrary to the public interest.
	22	s22(1)(a)(ii)	
	23	Folio exempt in full: s22(1)(a)(ii)	
	24	Folio exempt in full: s22(1)(a)(ii)	
	25	Folio exempt in full: s22(1)(a)(ii)	
	26	Folio exempt in full: s22(1)(a)(ii)	
7	27	s47C	
	29	s22(1)(a)(ii)	
	30	Folio exempt in full: s22(1)(a)(ii)	
	31	Folio exempt in full: s22(1)(a)(ii)	

Document	Folio #	Description	Exemption
	32	Folio exempt in full: s22(1)(a)(ii)	
	33	Folio exempt in full: s22(1)(a)(ii)	
8	34-35		Released in full



AFP
AUSTRALIAN FEDERAL POLICE

MEDIA RELEASE

05 June 2019

AFP statement on activity in Canberra and Sydney

Wednesday, 5 June 2019, Publish time: 4:32pm

The Australian Federal Police (AFP) can confirm there is no link between the execution of search warrants in the ACT suburb of Kingston yesterday (4 June 2019) and those on the Ultimo premises of the ABC today (5 June 2019). Both relate to separate allegations of publishing classified material, contrary to provisions of the Crimes Act 1914, which is an extremely serious matter that has the potential to undermine Australia's national security.

The AFP received two separate referrals from agency heads in relation to these serious matters.

The AFP's actions have been independent and impartial at all times. The AFP's role is to investigate breaches of Commonwealth criminal law. When the AFP receives referrals it assesses them for criminality and does not make value judgements on the issue. It identifies whether there have been any contraventions of Commonwealth law, and evidence as to whether the offence has been committed or otherwise.

AFP investigators are required to assess all the relevant facts in every matter. This includes enquiries into the classification of the information concerned, how it was handled and who had access to it. The execution of search warrants is an important tool to enable our investigators to achieve this, but it is just one aspect of our work. There are many avenues of inquiry and tools available to the AFP in investigations such as this.

All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.

The AFP can confirm the Minister for Home Affairs was not notified prior to the execution of the warrants.

The search warrants related to secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth).



AFP
AUSTRALIAN FEDERAL POLICE

The AFP was unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 (Cth) by the National Security Legislation (Espionage and Foreign Interference) Act 2018 (Cth), as the alleged conduct occurred before the new offences commenced.

Media enquiries

AFP Media: 02 6131 6333

THIS DOCUMENT HAS BEEN DECLASSIFIED
AND RELEASED IN ACCORDANCE WITH THE
FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)
BY THE AUSTRALIAN FEDERAL POLICE

POLICING FOR A SAFER AUSTRALIA

Media enquiries:

AFP National Media: (02) 6131 6333

Subscribe and receive email alerts

(link: <https://www.afp.gov.au/news-media/media-releases>) when new media releases are published.

www.afp.gov.au



AFP
AUSTRALIAN FEDERAL POLICE

MEDIA TALKING POINTS:

OPENING STATEMENT:

My name is Neil Gaughan and I am here as the acting Commissioner of the Australian Federal Police.

I want to assure the public that the AFP's actions over the past two days has been independent and impartial at all times.

The AFP has been investigating these matters since July 2017 and April 2018 respectively. The matters primarily relate to secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth).

The AFP's role is to investigate breaches of Commonwealth criminal law. We investigate laws passed by the Parliament, using powers granted to us by the Parliament.

Our investigations are an objective search for the truth. It involves the discovery and presentation of evidence in an exhaustive, comprehensive and organised manner. This includes the conduct of search warrants. No sector of the community should be immune from evidence collection, this includes law enforcement itself, the media or indeed politicians.



AFP
AUSTRALIAN FEDERAL POLICE

There are criminal allegations being investigated and we cannot ignore them. We are duty-bound to conduct these investigations impartially and thoroughly. Not to do so would be a breach of our oath of office as police officers.

These search warrants were authorised by an appropriate member of the judiciary. This is the result of supporting documentation being presented to the court which provides sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.

The execution of these warrants and the timing of these search warrants was a considered decision aimed at lawfully locating evidence and seizing that evidence in manner that will withstand the scrutiny of a court of law.

The collection of evidence and investigative processes undertaken by my staff, and by police more broadly when conducting an investigation must be within the law. Throughout the execution of the search warrants, in collaboration with the people affected, the AFP took additional care to protect the confidentiality of other personal or professional information.

Both of these investigations relate to national security information, how it was handled and who had access to it.



The material subject of these investigations and search warrants, relates to documents classified as both "Top Secret" and "Secret". The compromise of such material could cause **exceptionally grave damage or serious damage** to the National interest, organisations or individuals.

I need to emphasise not the Government nor any Minister has directed the actions of these investigations.

The AFP notified the Minister's Office it was investigating these matters. This notification occurred on referral of each matter to the AFP at the time. We did not provide regular updates on operational activities, nor did we tell them we had obtained search warrants and planned to execute these warrants.

(COMMONWEALTH)
BY THE AUSTRALIAN FEDERAL POLICE
Notification of the search warrants being executed occurred after the activity commenced. This was an operational decision and in accordance with our governance, and standard practice.

These investigations are typically complex and lengthy. The timing of these activities was influenced only by the progress of the investigation to date and sufficient information being available to support the application for a



AFP
AUSTRALIAN FEDERAL POLICE

search warrant. Any inference that suggests our decisions were influenced by anyone outside of our organisation, is strongly refuted.

I reject the claims over the past few days that we trying to intimidate journalists or conduct a campaign against the media.

The AFP supports press freedom. The media plays an important role in today's society in keeping the Australian community informed.

And finally I would like to state that my members have been subject to unprecedented scrutiny over the past few days and I want to reinforce my support to their actions. They have acted professionally and respectfully under challenging circumstances.

Thank you. I will now take any questions.

IF ASKED:

Is this an attack on freedom of the press? Why are journalists being targeted if you are looking for the source of the leak?

- No. The AFP supports press freedom. The media plays an important role in today's society in keeping the Australian community informed.
- The AFP targets criminal activity - in these cases we received referrals from other agencies that identified material which they assessed as classified or an official secret, and which had been published.



Search warrant processes

- All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.
- Under the terms of the search warrant, AFP investigators can seize material (electronic and hard copy) that relates to these allegations.

What legislation do these warrants relate to?

- The search warrants relate to offences under the secrecy offences in Part 6 of the Crimes Act 1914 (Cth)
- The AFP was unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 by the National Security Legislation (Espionage and Foreign Interference) Act 2018, as the alleged conduct occurred before the new legislation commenced.

THIS DOCUMENT HAS BEEN DECLASSIFIED
AND RELEASED IN ACCORDANCE WITH THE
FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)
BY THE AUSTRALIAN FEDERAL POLICE

s22(1)(a)(ii)

Did your officers go through the journalist's underwear draw?



AFP
AUSTRALIAN FEDERAL POLICE

- Search warrants have to be thorough when they are executed.
- We understand they can be intrusive for people concerned, and my officers were sensitive to people's privacy and concerns, where possible.
- For example, during Tuesday's warrant in Kingston, only female officers conducted searches of Ms Smethurst's bedroom and bathroom.

THIS DOCUMENT HAS BEEN DECLASSIFIED
AND RELEASED IN ACCORDANCE WITH THE
FREEDOM OF INFORMATION ACT 1982
^{s22(1)(a)(ii)}
(COMMONWEALTH)
BY THE AUSTRALIAN FEDERAL POLICE

POLICING FOR A SAFER AUSTRALIA

THIS DOCUMENT HAS BEEN DECLASSIFIED
AND RELEASED IN ACCORDANCE WITH THE
FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)
BY THE AUSTRALIAN FEDERAL POLICE



AFP
AUSTRALIAN FEDERAL POLICE

UNCLASSIFIED

MEDIA TALKING POINTS:

OPENING STATEMENT:

My name is Neil Gaughan and I am here as the acting Commissioner of the Australian Federal Police.

I want to assure the public that the AFP's actions over the past two days has been independent and impartial at all times.

The AFP has been investigating these matters since July 2017 and April 2018 respectively. The matters primarily relate to secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth).

The AFP's role is to investigate breaches of Commonwealth criminal law. We investigate laws passed by the Parliament, using powers granted to us by the Parliament. Our investigations are an objective search for the truth. It involves the discovery and presentation of evidence in an exhaustive, comprehensive and organised manner. This includes the conduct of search warrants. No sector of the community should be immune from evidence collection, this included law enforcement itself, the media or indeed politicians.

There are criminal allegations being investigated and we cannot ignore them. We are duty-bound to conduct these investigations impartially and thoroughly. Not to do so would be a breach of our oath of office as police officers.

These search warrants were authorised by an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.

The execution of these warrants, and the timing of these search warrants was a considered decision aimed at lawfully locating evidence and seizing that evidence in manner that will withstand the scrutiny of a court of law.

The collection of evidence and investigative processes undertaken by my staff, and by police more broadly when conducting an investigation, must be within the law. Throughout the execution the search warrants, in collaboration with the people effected the AFP took additional care to protect the confidentiality of other personal or professional information.

Both of these investigations relate to national security information, how it was handled and who had access to it.

POLICING FOR A SAFER AUSTRALIA

UNCLASSIFIED
www.afp.gov.au



UNCLASSIFIED

The material subject of these investigations and search warrants, relates to documents classified as both "Top Secret" and "Secret". The compromise of such material could cause **exceptionally grave damage or serious damage** to the National interest, organisations or individuals.

I need to emphasise not the Government nor any Minister has directed the actions of these investigations.

The AFP notified the Minister's Office it was investigating these matters. This notification occurred on referral of each matter to the AFP at the time. We did not provide regular updates on operational activities, nor did we tell them we had obtained search warrants and planned to execute these warrants.

Notification of the search warrants being executed occurred after the activity commenced. This was an operational decision and in accordance with our governance, and standard practice.

These investigations are typically complex and lengthy. The timing of these activities was influenced only by the progress of the investigation to date and sufficient information being available to support the application for a search warrant. Any inference that suggests our decisions were influenced by anyone outside of our organisation, is strongly refuted.

I reject the claims over the past few days that we trying to intimidate journalists or conduct a campaign against the media.

The AFP supports press freedom. The media plays an important role in today's society in keeping the Australian community informed.

And finally I would like to state that my members have been under unprecedented scrutiny over the past few days and I want to reinforce my support to their actions. They have acted professionally and respectfully under challenging circumstances.

They have my full support.



AFP
AUSTRALIAN FEDERAL POLICE

MEDIA TALKING POINTS:

OPENING STATEMENT:

My name is Neil Gaughan and I am here as the acting Commissioner of the Australian Federal Police.

I want to assure the public that the AFP's actions over the past two days has been independent and impartial at all times.

The AFP has been investigating these matters since July 2017 and April 2018 respectively. The matters primarily relate to secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth).

The AFP's role is to investigate breaches of Commonwealth criminal law. Our investigations are an objective search for the truth. It involves the discovery and presentation of evidence in an exhaustive, comprehensive and organised manner. This includes the conduct of search warrants.

There are criminal allegations being investigated and we cannot ignore them. We are duty-bound to conduct these investigations impartially and thoroughly.

These search warrants were authorised by an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.

The execution of these warrants was a considered decision aimed at lawfully locating evidence and seizing that evidence in manner that will withstand the scrutiny of a court of law.

The collection of evidence and investigative processes undertaken by my staff, and by police more broadly when conducting an investigation, must be within the law. Throughout the execution the search warrants, in collaboration with the people effected the AFP took additional care to protect the confidentiality of other personal or professional information.

Both of these investigations relate to national security information, how it was handled and who had access to it.

The material subject of these investigations and search warrants, relates to documents classified as both "Top Secret" and "Secret". The compromise of such material could cause **exceptionally grave damage or serious damage** to the National interest, organisations or individuals.



AFP
AUSTRALIAN FEDERAL POLICE

These definitions come from the Commonwealth Protective Security Policy Framework. The publication and disclosure of such classified material is a criminal offence.

I need to emphasise not the Government nor any Minister has directed the actions of these investigations.

The AFP notified the Minister's Office it was investigating these matters. This notification occurred on referral of each matter to the AFP at the time. We did not provide regular updates on operational activities, nor did we tell them we had obtained search warrants and planned to execute these warrants.

Notification of the search warrants being executed occurred after the activity commenced. This was an operational decision and in accordance with our governance, and standard practice.

These investigations are typically complex and lengthy. The timing of these activities was influenced only by the progress of the investigation to date and sufficient information being available to support the application for a search warrant. Any inference that suggests our decisions were influenced by anyone outside of our organisation, is strongly refuted.

I reject the claims over the past few days that we trying to intimidate journalists or conduct a campaign against the media.

The AFP supports press freedom. The media plays an important role in today's society in keeping the Australian community informed.

And finally I would like to state that my members have been under unprecedented scrutiny over the past few days and I want to reinforce my support to their actions. They have acted professionally and respectfully under challenging circumstances.

They have my full support.



AFP
AUSTRALIAN FEDERAL POLICE

UNCLASSIFIED

MEDIA TALKING POINTS:

OPENING STATEMENT:

My name is Neil Gaughan and I am here as the acting Commissioner of the Australian Federal Police.

I want to assure the public that the AFP's actions over the past two days has been independent and impartial at all times.

The AFP has been investigating these matters since July 2017 and April 2018 respectively. The matters primarily relate to secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth).

The AFP's role is to investigate breaches of Commonwealth criminal law. We investigate laws passed by the Parliament, using powers granted to us by the Parliament. Our investigations are an objective search for the truth. It involves the discovery and presentation of evidence in an exhaustive, comprehensive and organised manner. This includes the conduct of search warrants. No sector of the community should be immune from evidence collection, this included law enforcement itself, the media or indeed politicians.

There are criminal allegations being investigated and we cannot ignore them. We are duty-bound to conduct these investigations impartially and thoroughly. Not to do so would be a breach of our oath of office as police officers.

These search warrants were authorised by an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.

The execution of these warrants, and the timing of these search warrants was a considered decision aimed at lawfully locating evidence and seizing that evidence in manner that will withstand the scrutiny of a court of law.

The collection of evidence and investigative processes undertaken by my staff, and by police more broadly when conducting an investigation, must be within the law. Throughout the execution the search warrants, in collaboration with the people effected the AFP took additional care to protect the confidentiality of other personal or professional information.

Both of these investigations relate to national security information, how it was handled and who had access to it.

UNCLASSIFIED
www.afp.gov.au



AFP
AUSTRALIAN FEDERAL POLICE

UNCLASSIFIED

The material subject of these investigations and search warrants, relates to documents classified as both "Top Secret" and "Secret". The compromise of such material could cause **exceptionally grave damage or serious damage** to the National interest, organisations or individuals.

I need to emphasise not the Government nor any Minister has directed the actions of these investigations.

The AFP notified the Minister's Office it was investigating these matters. This notification occurred on referral of each matter to the AFP at the time. We did not provide regular updates on operational activities, nor did we tell them we had obtained search warrants and planned to execute these warrants.

Notification of the search warrants being executed occurred after the activity commenced. This was an operational decision and in accordance with our governance, and standard practice.

These investigations are typically complex and lengthy. The timing of these activities was influenced only by the progress of the investigation to date and sufficient information being available to support the application for a search warrant. Any inference that suggests our decisions were influenced by anyone outside of our organisation, is strongly refuted.

I reject the claims over the past few days that we trying to intimidate journalists or conduct a campaign against the media.

The AFP supports press freedom. The media plays an important role in today's society in keeping the Australian community informed.

And finally I would like to state that my members have been under unprecedented scrutiny over the past few days and I want to reinforce my support to their actions. They have acted professionally and respectfully under challenging circumstances.

They have my full support.

POLICING FOR A SAFER AUSTRALIA

UNCLASSIFIED
www.afp.gov.au



MEDIA RELEASE

AFP statement on activity in Canberra and Sydney

5 June 2019

The Australian Federal Police (AFP) can confirm there is no link between the execution of search warrants in the ACT suburb of Kingston yesterday (4 June 2019) and those on the Ultimo premises of the ABC today (5 June 2019). Both however relate to separate allegations of publishing classified material, contrary to provisions of the *Crimes Act 1914*, which is an extremely serious matter that has the potential to undermine Australia's national security.

The AFP received two separate referrals from agency heads in relation to these serious matters.

The AFP's actions have been independent and impartial at all times. The AFP's role is to investigate breaches of Commonwealth criminal law. When the AFP receives referrals it assesses them for criminality and does not make value judgements on the issue instead identifying whether there has been any contraventions of Commonwealth Law, and when evidence as to whether the offence has been committed or otherwise.

AFP investigators are required to assess all the relevant facts in every matter. This includes enquiries into the classification of the information concerned, how it was handled and who had access to it. The execution of search warrants is an important tool to our investigations to achieve this but is just one aspect of our work. There are many avenues of inquiry and tools available to the AFP in investigations such as this.

All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.

The AFP can confirm the Minister for Home Affairs was not notified prior to the execution of the warrants.

The search warrants related to offences under the secrecy offences in Part 6 of the *Crimes Act 1914*.

The AFP were unable to rely on the revised secrecy offences inserted into the *Criminal Code Act 1995* by the *National Security Legislation (Espionage and Foreign Interference) Act 2018*, as the alleged conduct occurred before the new offences commenced.



AFP
AUSTRALIAN FEDERAL POLICE

Media enquiries

AFP Media: 02 6131 6333

Media enquiries:

AFP National Media: (02) 6131 6333

Subscribe and receive email alerts

(link: <https://www.afp.gov.au/news-media/media-releases>) when new media releases are published.

POLICING FOR A SAFER AUSTRALIA

www.afp.gov.au



AFP
AUSTRALIAN FEDERAL POLICE

MEDIA TALKING POINTS:

OPENING STATEMENT:

Good afternoon, and thank for being here today.

My name is Neil Gaughan and I am the acting Commissioner of the Australian Federal Police.

I am here to assure the public and Australian media outlets that the AFP's actions over the past couple of days have been independent and impartial at all times.

Our role is to investigate breaches of Commonwealth criminal law. When the AFP receives referrals it assesses them for criminality and does not make value judgements on the issue. We identify whether there have been any contraventions of Commonwealth law, and seek to gather evidence as to whether the offence has been committed or otherwise.

Our investigators are required to assess all the relevant facts in every matter. In these matters, this includes enquiries into the classification of the information concerned, how it was handled and who had access to it.

Search warrants are an important tool for investigators, but they are just one aspect of our work. There are many avenues of inquiry and tools available to the AFP – search warrants are not the first activity we do in every investigation.

The Department of Home Affairs is not involved in any of these investigations, and I feel they respect our independence in relation to our statutory obligations.

(COMMONWEALTH)
s47C
BY THE AUSTRALIAN FEDERAL POLICE

Home Affairs can only investigate the actions of its own employees and contractors.

IF ASKED:

Is this an attack on freedom of the press? Why are journalists being targeted if you are looking for the source of the leak?

- No.
- The AFP targets criminal activity – we received referrals from other agencies that identified material they assessed as classified or an official secret that had been published.
- There are clear offences regarding this and we cannot ignore them. We are duty-bound to prioritise investigations into matters like this, and to conduct them thoroughly.

POLICING FOR A SAFER AUSTRALIA



Search warrant processes

- All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.
- The search warrants were conducted in relation to the Crimes Act 1914 and extremely serious allegations which impact on Australia's national security.
- Under the terms of the search warrant, AFP investigators can seize material (electronic and hard copy) that relates to these allegations.

s22(1)(a)(ii)

What legislation do these warrants relate to?

- The search warrants related to offences under the secrecy offences in Part 6 of the Crimes Act 1914. (CHECK)
- The AFP were unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 by the National Security Legislation (Espionage and Foreign Interference) Act 2018, as the alleged conduct occurred before the new offences commenced.

s22(1)(a)(ii)

Did your officers go through the journalist's underwear draw?

- Search warrants have to be thorough when they are executed.
- We understand they can be intrusive for people concerned, so we try and be sensitive to people's concerns, where possible.
- For example, on Tuesday's warrant in Kingston, only female officers conducted searches of the bedroom and bathroom.

s22(1)(a)(ii)

THIS DOCUMENT HAS BEEN DECLASSIFIED
AND RELEASED IN ACCORDANCE WITH THE
FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)
BY THE AUSTRALIAN FEDERAL POLICE



AFP
AUSTRALIAN FEDERAL POLICE

MEDIA TALKING POINTS:

OPENING STATEMENT:

My name is Neil Gaughan and I am here as the acting Commissioner of the Australian Federal Police.

I am here to assure the public and Australian media outlets that the AFP's actions over the past couple of days have been independent and impartial at all times.

Our role is to investigate breaches of Commonwealth criminal law. When the AFP receives a referral about alleged criminal conduct, it assesses the available facts and sets about building a brief of evidence. We do not make value judgements on the issue.

We identify whether there have been any contraventions of Commonwealth law, and seek to gather evidence as to whether the offence has been committed or otherwise.

Our investigators are required to assess all the relevant facts in every matter. In these matters, this includes enquiries into the classification of the information concerned, how it was handled and who had access to it.

Search warrants are an important tool for investigators, but they are just one aspect of our work. There are many avenues of inquiry and tools available to the AFP - search warrants are not the first activity we do in every investigation.

We have been asked about the involvement of the Government. I need to emphasise the Government or any Minister did not direct the actions of these investigations. In fact, we have deliberately kept knowledge of these investigations to as few people as possible.

The AFP did notify the Minister's Office that it was investigating these matters as per the AFP Guideline on Politically Sensitive Investigations.

In each instance, the Minister for Home Affairs' Chief of Staff was made aware that the AFP had received a referral and was commencing an investigation. We did not provide regular updates on operational activities, or tell them that we had obtained search warrants and planned to execute them.

The Department of Home Affairs is not involved in any of these investigations, and I feel they respect our independence in relation to our statutory obligations.

s47C



AFP
AUSTRALIAN FEDERAL POLICE

To be honest, there is no ideal time to execute a search warrant on journalists or media outlets. Both of these matters, investigators had reached a point where we could not progress them further without executing the warrants.

We needed to ensure all investigators and digital forensics members required on these warrants were available at the same time. Because of this, it was determined that executing the warrants on consecutive days was the most effective use of their time.

I reject the multiple claims over the past few days that we trying to intimidate journalists or conduct a campaign against the media.

The AFP targets criminal activity – we received referrals from other agencies that identified material they assessed as classified or an official secret that had been published.

There are criminal offences that may apply to this and we cannot ignore them. We are duty-bound to prioritise investigations into matters like this, and to conduct them impartially and thoroughly. The easiest course of action for us to ignore them, but that would violate every oath we have taken as police.

IF ASKED:

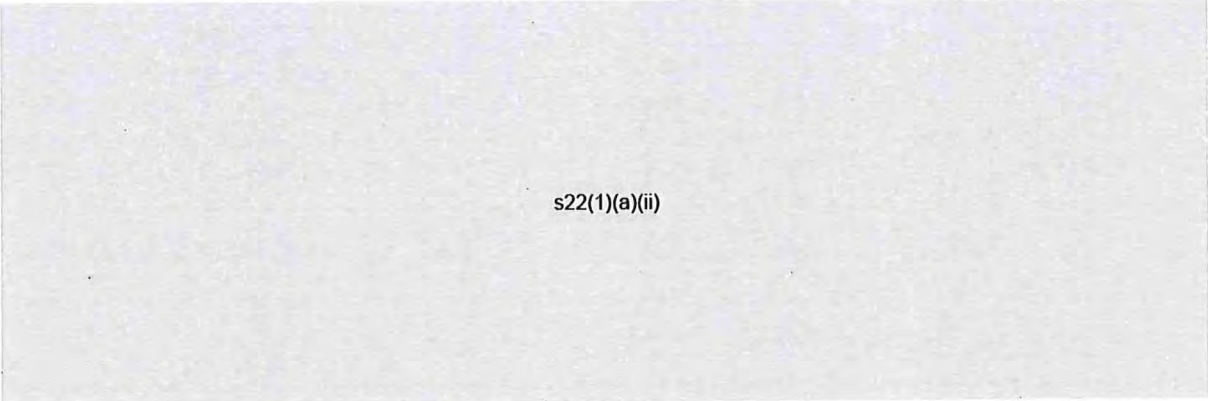
Is this an attack on freedom of the press? Why are journalists being targeted if you are looking for the source of the leak?

- No.
- The AFP targets criminal activity – we received referrals from other agencies that identified material they assessed as classified or an official secret that had been published.
- There are clear offences regarding this and we cannot ignore them. We are duty-bound to prioritise investigations into matters like this, and to conduct them thoroughly.

Search warrant processes

- All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.
- The search warrants were conducted in relation to the Crimes Act 1914 and extremely serious allegations which impact on Australia’s national security.
- Under the terms of the search warrant, AFP investigators can seize material (electronic and hard copy) that relates to these allegations.

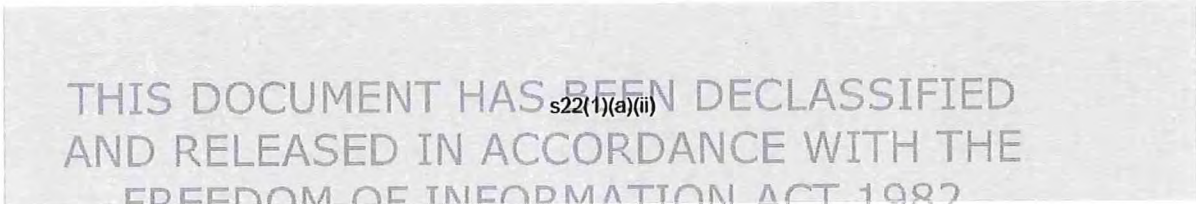
POLICING FOR A SAFER AUSTRALIA



s22(1)(a)(ii)

What legislation do these warrants relate to?

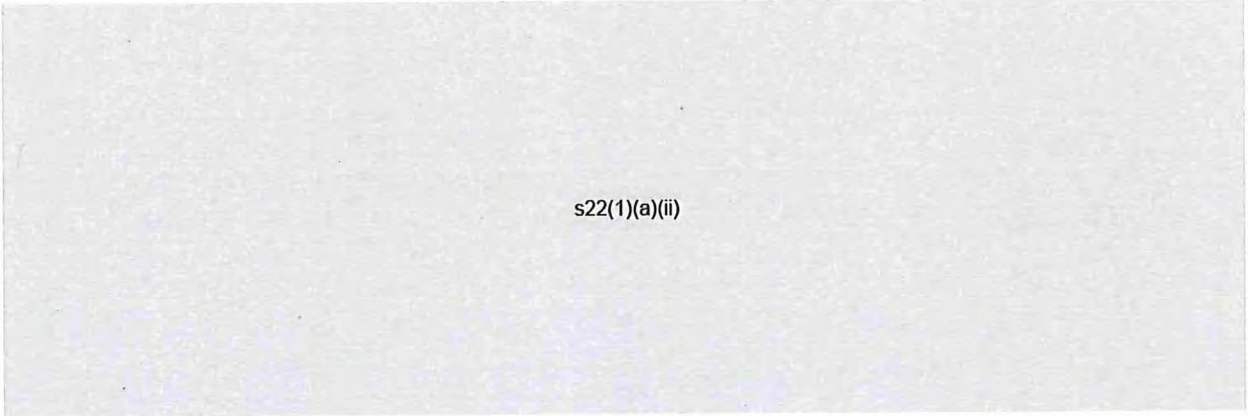
- The search warrants related to offences under the secrecy offences in Part 6 of the Crimes Act 1914. (CHECK)
- The AFP were unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 by the National Security Legislation (Espionage and Foreign Interference) Act 2018, as the alleged conduct occurred before the new offences commenced.



s22(1)(a)(ii)

Did your officers go through the journalist's underwear draw?

- Search warrants have to be thorough when they are executed.
- We understand they can be intrusive for people concerned, so we try and be sensitive to people's concerns, where possible.
- For example, on Tuesday's warrant in Kingston, only female officers conducted searches of the bedroom and bathroom.



s22(1)(a)(ii)

THIS DOCUMENT HAS BEEN DECLASSIFIED
AND RELEASED IN ACCORDANCE WITH THE
FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)
BY THE AUSTRALIAN FEDERAL POLICE



AFP

AUSTRALIAN FEDERAL POLICE

UNCLASSIFIED

MEDIA TALKING POINTS:

OPENING STATEMENT:

My name is Neil Gaughan and I am here as the acting Commissioner of the Australian Federal Police.

I want to assure the public that the AFP's actions over the past two days has been independent and impartial at all times.

The AFP has been investigating these matters since July 2017 and April 2018 respectively. The matters primarily relate to secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth).

The AFP's role is to investigate breaches of Commonwealth criminal law. We investigate laws passed by the Parliament, using powers granted to us by the Parliament. Our investigations are an objective search for the truth. It involves the discovery and presentation of evidence in an exhaustive, comprehensive and organised manner. This includes the conduct of search warrants. No sector of the community should be immune from evidence collection, this included law enforcement itself, the media or indeed politicians.

There are criminal allegations being investigated and we cannot ignore them. We are duty-bound to conduct these investigations impartially and thoroughly. Not to do so would be a breach of our oath of office as police officers.

These search warrants were authorised by an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.

The execution of these warrants, and the timing of these search warrants was a considered decision aimed at lawfully locating evidence and seizing that evidence in manner that will withstand the scrutiny of a court of law.

The collection of evidence and investigative processes undertaken by my staff, and by police more broadly when conducting an investigation, must be within the law. Throughout the execution the search warrants, in collaboration with the people effected the AFP took additional care to protect the confidentiality of other personal or professional information.

Both of these investigations relate to national security information, how it was handled and who had access to it.

UNCLASSIFIED

www.afp.gov.au

POLICING FOR A SAFER AUSTRALIA



AFP

AUSTRALIAN FEDERAL POLICE

UNCLASSIFIED

The material subject of these investigations and search warrants, relates to documents classified as both "Top Secret" and "Secret". The compromise of such material could cause **exceptionally grave damage or serious damage** to the National interest, organisations or individuals.

I need to emphasise not the Government nor any Minister has directed the actions of these investigations.

The AFP notified the Minister's Office it was investigating these matters. This notification occurred on referral of each matter to the AFP at the time. We did not provide regular updates on operational activities, nor did we tell them we had obtained search warrants and planned to execute these warrants.

Notification of the search warrants being executed occurred after the activity commenced. This was an operational decision and in accordance with our governance, and standard practice.

These investigations are typically complex and lengthy. The timing of these activities was influenced only by the progress of the investigation to date and sufficient information being available to support the application for a search warrant. Any inference that suggests our decisions were influenced by anyone outside of our organisation, is strongly refuted.

I reject the claims over the past few days that we trying to intimidate journalists or conduct a campaign against the media.

The AFP supports press freedom. The media plays an important role in today's society in keeping the Australian community informed.

And finally I would like to state that my members have been under unprecedented scrutiny over the past few days and I want to reinforce my support to their actions. They have acted professionally and respectfully under challenging circumstances.

They have my full support.