

**ACTFOI**

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**From:** David [REDACTED]  
**Sent:** Wednesday, 14 December 2022 11:43 AM  
**To:** Iain [REDACTED]; Joanne [REDACTED]; Erin [REDACTED]  
**Cc:** Susan [REDACTED]; ACTFOI; Patrick [REDACTED]  
**Subject:** RE: [External] Complaint against the ACT DPP re FOI release [SEC=OFFICIAL]

OFFICIAL

OFFICIAL

Thanks, Iain.

@Erin [REDACTED]'s team is managing the first complaint from AFPA, and will manage this one, as complaints under s.69 of the FOI Act (ACT).

Erin, given the 2 complaints raise essentially the same issues, it would be good to look at whether and how we can consider them jointly or at least avoid unnecessary duplication.

I think we should also consider if it's possible or necessary to publish our ultimate findings and any recommendations or outcomes, given the strong public interest in this matter.

David  
 [REDACTED]

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**From:** Iain [REDACTED] <[REDACTED]@ombudsman.gov.au>  
**Sent:** Wednesday, 14 December 2022 11:28 AM  
**To:** David [REDACTED]@ombudsman.gov.au; Joanne [REDACTED]@ombudsman.gov.au  
**Subject:** FW: [External] Complaint against the ACT DPP re FOI release [SEC=OFFICIAL]

OFFICIAL

OFFICIAL

David and Jo,

A second complaint on this matter, which I think is being handled between Erin [REDACTED] ACT FOI team and Patrick [REDACTED]'s Investigations team.

Regards,  
 Iain

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**From:** [REDACTED] Peter [REDACTED] <[REDACTED]@afp.gov.au>  
**Sent:** Wednesday, 14 December 2022 11:23 AM  
**To:** Iain [REDACTED]@ombudsman.gov.au  
**Cc:** [complaints@ombudsman.gov.au](mailto:complaints@ombudsman.gov.au); Gaughan, Neil [REDACTED]  
**Subject:** [External] Complaint against the ACT Ombudsman [SEC=OFFICIAL]

OFFICIAL

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Mr Iain [REDACTED]  
 ACT Ombudsman  
 GPO Box 442  
 Canberra ACT 2601

Dear Mr [REDACTED]

### **Complaint against ACT Director of Public Prosecutions**

I am writing to make a complaint about a recent freedom of information (FOI) decision made by the ACT Director of Public Prosecutions (DPP).

#### **Background**

At 11.45am on Thursday 8 December 2022, ACT Policing (ACTP) Media was emailed by Christopher Knaus of The Guardian in relation a letter sent by the ACT DPP to me dated 1 November 2022. In that letter, the Director outlines a number of serious allegations he makes in respect to the investigation that led to the prosecution known as *R v LEHRMANN - SCC 264 of 2021*. Mr Knaus advised my media staff he had obtained this letter from the ACT DPP through an FOI request. Mr Knaus sought a response from ACTP to a number of questions he provided by 1.30pm on 8 December 2022.

#### **Requirement to undertake consultation was not followed**

I am concerned ACTP was not consulted about this FOI request. There was information released to The Guardian over which ACTP would have sought redactions in accordance with the relevant provisions under the *Freedom of Information Act 2016* (ACT) (the ACT FOI Act).

In my view, ACT DPP appear not to have complied with section 38 of the ACT FOI Act. As you are aware, section 38 of the ACT FOI Act requires the respondent (in this case the ACT DPP) to take reasonable steps to consult with a relevant third party (which in this case includes ACTP amongst other entities) before deciding to grant access to the requested information. I believe that consultation should have been either with the individual named officers because the information includes their personal information (s 38(3)(a)(i)), or with ACTP as the information concerns the affairs of ACTP (s 38(3)(b)) as a relevant agency.

The *Freedom of Information Guidelines Volume 3: Dealing with access applications* also makes it clear the ACT FOI Act provides that government information may reasonably be expected to be of concern if it concerns the affairs of the government or agency. Further, that *“this scenario is quite broad and consequently consultation will be required unless the decision-maker is aware the government of agency is not concerned by the possible release and/or has agreed that formal consultation is not required”*. There was no engagement with ACTP in relation to the proposed release of the letter, or any other documents relating to this matter.

#### **Open access to information where disclosure contrary to the public interest**

Further, the subsequent disclosure of the letter to The Guardian included information that should not have been made available because it was contrary to the public interest. In particular, I consider the disclosure of some information within the letter could be considered contrary to the public interest in accordance with section 16 and Schedule 1 of the ACT FOI Act (including: items 1.2 and 1.4). Alternatively, I consider there are also factors in Schedule 2 which weigh strongly against disclosure being in the public interest in accordance with so section 17 (including: items 2.2(a)(iv), 2.2 (a)(x) and 2.2(b)(v)).

#### **Attempt to consult ACT DPP**

At 4.25pm on Thursday 8 December 2022, I wrote to the ACT DPP FOI Officer by email raising these concerns and requesting ACTP be consulted before the ACT DPP uploaded the document onto its publicly available FOI Disclosure Log. In the absence of any response from the ACT DPP, I followed up this email around 9.00am on Friday 9

December 2022 by calling the ACT DPP contact number for FOI matters. I left a message with an ACT DPP staff member who undertook to locate the email from the day before and respond. To date, ACTP has not received any response.

Nevertheless, the ACT DPP uploaded the document released to The Guardian to its Disclosure Log at some time on the morning of 12 December 2022. While the version uploaded to the Disclosure Log included some redactions, ACTP was not consulted on these redactions.

On this basis, I have chosen not to further try to resolve this complaint directly with the ACT DPP.

**Requested action**

The consultation process is a tenet of freedom of information legislation and essential to good administration. Even if the ACT DPP did not consider consultation was *required* by the ACT FOI Act, it is generally considered good practice to consult with other relevant agencies having regard to the content of the particular document(s) and the subject matter. The consultation process also enlivens the right of review in the event access is granted to the document(s).

For those reasons, proper and effective consultation cannot be disregarded including in a policing context where operational impacts and officer safety need to be taken into consideration.

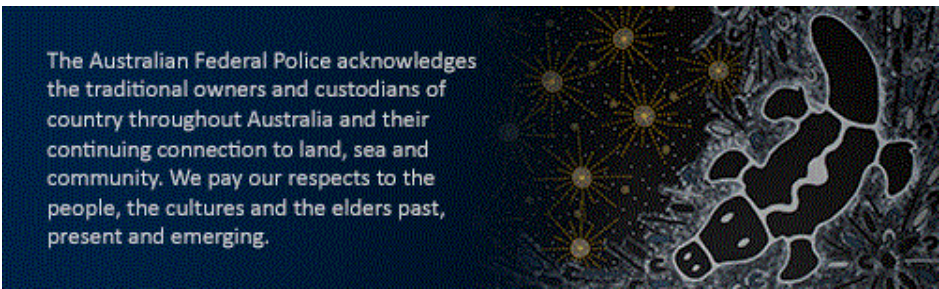
I request your consideration of whether the ACT DPP has failed to comply with their obligations under the ACT FOI Act, and any further appropriate actions.

Yours sincerely

**PETER** [REDACTED]  
EXECUTIVE GENERAL MANAGER CORPORATE  
ACT POLICING  
Tel: [REDACTED]  
[www.afp.gov.au](http://www.afp.gov.au)



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