



AFP

Our Ref: LEX 2651

17 May 2024

Mr Jeremy Malcolm

By email only: jeremy@malcolm.id.au

Dear Mr Malcolm

Freedom of Information request LEX 2651

I refer to your request dated 22 April 2024 made under the *Freedom of Information Act 1982* (the Act).

Attached at Annexure A to this letter is my decision and statement of reasons for that decision.

I have decided to publish the documents in full in respect of your request. Publication of the documents will be made on the AFP website at <https://www.afp.gov.au/about-us/information-publication-scheme/routinely-requested-information-and-disclosure-log> in accordance with timeframes stipulated in section 11C of the Act.

Yours sincerely

C.A

Casey Auld
A/FOI Team Leader – Corporate
Freedom of Information
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
JEREMY MALCOLM**

I, Casey Auld, A/FOI Team Leader, Freedom of Information, am an officer authorised under section 23 of the Act to make decisions in relation to the Australian Federal Police (AFP).

What follows is my decision and reasons for the decision in relation to your request.

BACKGROUND

On 22 April 2024, the AFP received your request in the following terms:

I am writing to request information under the Freedom of Information Act 1982 (FOI Act) regarding the proportion of arrests and prosecutions involving fictional/fantasy child abuse materials, such as drawings, cartoons, computer generated images, chats, or stories, within the jurisdiction of the Australian Federal Police (AFP).

Specifically, I am seeking the following information:

- 1. The total number of arrests made by the AFP related to child exploitation offences for the past five years, broken down by year.*
- 2. The number of prosecutions initiated by the AFP for child exploitation offences for the past five years, broken down by year.*
- 3. Among the prosecutions initiated, the proportion that involved non-realistic fictional child abuse materials, such as drawings or stories, for the past five years, broken down by year.*
- 4. Any relevant policies, guidelines, or procedures employed by the AFP in addressing cases involving non-realistic fictional child abuse materials.*

SEARCHES

Searches for documents were undertaken by the Australian Centre to Counter Child Exploitation (ACCCE) Strategy and Coordination team as the operational area with responsibility for the data to which you seek.

EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

In reaching my decision, I have relied on the following:

- the scope of your request;
- the contents of the document created in response to the request;
- advice from AFP officers with responsibility for matters contained in the documents;
- the Act; and
- the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the Act.

DECISION

In regards to your request, the information was not available in a discreet form in a written document within AFP digital holdings. The AFP was able to produce one (1) document containing the information requested in points 1, 2 and 4 of your request, in accordance with section 17(1) of the Act.

I have decided to release that document to you in full.

In regards to point 3 of your request, this data is not captured as the AFP do not record or breakdown statistics by the particular variable you have identified.

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

REVIEW AND COMPLAINT RIGHTS

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

For complaints about the AFP's actions in processing your request, you do not need to seek review by either the AFP or the IC in making your complaint.

REVIEW RIGHTS under Part VI of the Act

Internal review by the AFP

Section 54 of the FOI Act gives you the right to apply for internal review of this decision. No particular form is required to make an application for internal review, however, an application needs to be made in writing within 30 days of this decision. It would assist the independent AFP decision-maker responsible for reviewing the file if you set out in the application, the grounds on which you consider the decision should be reviewed.

Section 54B of the FOI Act provides that the internal review submission must be made within 30 days. Applications may be sent by email (foi@afp.gov.au) or 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

Alternatively, section 54L of the FOI Act gives you the right to apply directly to the IC for review of this decision. 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.

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

Applications for IC review may be lodged by email (foidr@oaic.gov.au), using the OAIC's online application form (available at www.oaic.gov.au) or addressed to:

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

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

Complaint

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can make a complaint to the IC. A complaint may be lodged using the same methods identified above. It would assist if you set out the action you consider should be investigation and your reasons or grounds.

More information about IC reviews and complaints is available on the OAIC's website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.



Data – Statistics on Child Exploitation Offences

SOURCE: Australian Centre to Counter Child Exploitation (ACCCE) via AFP Crime Command, as of 29 April 2024.

The total number of arrests made by the AFP related to child exploitation offences for the past five years, broken down by year.

FY 19/20: 161

FY 20/21: 235

FY 21/22: 221

FY 22/23: 186

The number of prosecutions initiated by the AFP for child exploitation offences for the past five years, broken down by year.

The AFP does not initiate prosecutions, this is a matter for the Commonwealth Director of Public Prosecutions (CDPP) and as such, this question is best directed to the CDPP.

In terms of the number of charges laid, please see below for a FY breakdown:

FY 19/20: 1214

FY 20/21: 2772

FY 21/22: 1746

FY 22/23: 925

Among the prosecutions initiated, the proportion that involved non-realistic fictional child abuse materials, such as drawings or stories, for the past five years, broken down by year.

The ACCCE does not record or breakdown statistics by that particular variable.

Any relevant policies, guidelines, or procedures employed by the AFP in addressing cases involving non-realistic fictional child abuse materials.

The AFP relies upon relevant legislation to investigate online child sexual abuse offences.



Offences pertaining to online child abuse material are encompassed within the *Criminal Code Act 1995* (Cth), specifically Subdivision D (Offences relating to use of carriage service for child abuse material) within Division 474 (Telecommunications Offences).

Section 473.1 provides the definition of child abuse material. Under this definition, online simulations, fantasy, text-based stories, animations and cartoons, including artificial intelligence-generated content depicting child sexual abuse are all still considered child abuse material under Commonwealth legislation.