



13 May 2016

Ben

foi+request-1686-393debf8@righttoknow.org.au

Dear Ben

Freedom of Information Request

I refer to your request to the Attorney General's Department of 29 February 2016 for access under the *Freedom of Information Act 1982* (the FOI Act) to:

documents relating to the average number of deaths of Aboriginals in NSW, QLD and NT police cells in the last decade.

On 11 March 2016 your request was transferred to the Australian Institute of Criminology (AIC) under section 16(1)(b) of the FOI Act. The AIC is the Commonwealth agency that monitors deaths in custody on a national basis through the National Deaths in Custody Program (NDICP).

This is a decision made under the FOI Act in relation to documents within the scope of that request.

Documents identified

Information currently available from the AIC only relates to deaths in custody up to December 2013. As such, we have considered the decade referred to in your request to be from 2003 to 2013.

I have identified five documents as matching the description of your request. These are:

- A spreadsheet containing information on the number of Indigenous deaths in police cells for each jurisdiction.
- A police notification report from Queensland Police relating to the 2003 death.
- A police notification report from Queensland Police relating to the 2004 death.
- A police notification report from Northern Territory Police relating to the 2009 death.
- A police notification report from Northern Territory Police relating to the 2012 death.

Authority and materials considered

I am authorised under section 23 of the FOI Act to make a decision concerning the information you have requested access to.

In reaching my decision I have taken into consideration:

- the relevant provisions of the FOI Act;
- the contents of the relevant documents;
- relevant guidelines issued by the Office of the Australian Information Commissioner; and
- relevant Tribunal and Federal Court decisions concerning the operation of the FOI Act.

Decision

I have decided that the spreadsheet containing information on the number of Indigenous deaths in police cells for each jurisdiction may be released in full under the FOI Act (see Appendix A).

I have decided that the four police notification reports identified above are conditionally exempt from release under the terms of section 47B(b) of the FOI Act. Section 47B(b) states that a document is an exempt document if disclosure of the document:

would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, 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 information contained in the four police notification reports was provided to the AIC on the understanding that the information provided by Queensland Police and Northern Territory Police would be held in confidence by the AIC. Furthermore, this offer of confidentiality is supported by an independent Human Research Ethics Committee protocol that requires deaths in custody material received from state agencies to be treated confidentially.

I consider that release of the four documents concerned would represent a breach of confidence between the AIC and the respective police services and could adversely affect the AIC's ability to continue to monitor this important issue in future.

Public Interest Considerations

Section 11A(5) of the FOI Act requires that the AIC must give access to documents that are conditionally exempt unless such access would, on balance, be contrary to the public interest. The public interest test for the conditional exemptions referred to above requires the AIC to weigh the competing public interests and decide where the balance lies.

There are a number of public interest factors favouring access. They are that disclosure would:

- a) Promote the objects of the FOI Act
- b) Promote oversight of public expenditure
- c) Provide the Australian community with access to information held by the AIC;

- d) Increase the scrutiny, discussion, comment and review of the AIC's activities;
- e) Allow the public to scrutinise the AIC's operations and make its own judgment as to whether the agency is discharging its functions properly;

There are a number of other factors that would render the release of this information as contrary to the public interest. These are:

- a) release could reasonably be expected to prejudice the AIC's ability to obtain confidential information;
- b) release could reasonably be expected to negatively impact on Commonwealth-State relations; and
- c) release could reasonably be expected to prejudice the AIC's ability to take part in similar research in future.

On balance, I consider that the public interest factors against the disclosure of the police notification reports outweigh the public interest factors in favour of disclosure. I have reached this conclusion because of the sensitivity of the information, and the risk to the integrity of AIC's research process. If State agencies cannot trust that information provided to the AIC will remain confidential it may substantially impact on their willingness to provide information to the AIC in the future.

Disclosure Log

Section 11C of the FOI Act provides that information about any documents released under that Act must be published on our website within 10 days of release, subject to the exemptions set out in section 11C(1)(a)-(d). In this case, the spreadsheet containing information on the number of Indigenous deaths in police cells for each jurisdiction (not the police notification reports) will be uploaded to:

http://aic.gov.au/about_aic/corporate%20information/foi.html

Your review rights

If you are dissatisfied with this decision you can apply for internal review or review by the Information Commissioner. You do not have to apply for internal review before seeking the Information Commissioner's review.

Internal review

You may seek internal review by making an application in writing to the AIC within 30 days of being notified of this decision. A written application for a review should be sent to the Deputy Director (Research) – rick.brown@aic.gov.au, or by post to:

Australian Institute of Criminology
GPO Box 1936
Canberra
ACT 2601

Information Commissioner review

Alternatively, you may apply in writing for review by the Information Commissioner. In making your application you need to provide:

- an address for notices to be sent (this can be an email address)
- a copy of this decision.

It would also help if you set out the reasons for review in your application. Requests for review must be in writing and can be made via the website (www.oaic.gov.au), by email at enquiries@oaic.gov.au, or by post at:

Office of the Australian Information Commissioner
GPO Box 2999
Canberra ACT 2601

If you are objecting to a decision to refuse access to documents you must apply to the Information Commissioner within 60 days of being given notice of the decision. You can contact the Information Commissioner by phone on 1300 363 992.

Right to complain

You may make a complaint to the Information Commissioner about action taken by the AIC in relation to your application. The complaint needs to be in writing and identify the agency against which the complaint is made.

The Information Commissioner 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.

Yours sincerely,



Chris Dawson, APM
Director (CEO)

13 May 2016, 1.40 pm

Appendix A: Deaths in police custody (police cells only) by jurisdiction, year and Indigenous status, 2003-04 to 2012-13

| Deaths in police custody (police cells only) by jurisdiction, year and Indigenous status, 2003-04 to 2012-13 (n) | | | | | | | | | | |
|--|-----|-----|-----|----|----|-----|----|-----|---------|--------|
| | NSW | Vic | Qld | WA | SA | Tas | NT | ACT | Cmnwlth | Totals |
| 2003/04 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 2 |
| 2004/05 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 2005/06 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2006/07 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2007/08 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2008/09 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| 2009/10 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| 2010/11 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| 2011/12 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| 2012/13 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Totals | 0 | 0 | 2 | 4 | 0 | 0 | 2 | 0 | 0 | 8 |