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Independent Report

The Abuse & Failure Of The Freedom Of Information Act With Respect To The Schapelle Corby Case

The Expendable Project
www.expendable.tv

CONTENTS

1. Introduction
2. The Australian Broadcasting Corporation (ABC)
3. The Customs & Border Protection Service
4. The Commonwealth Director Of Public Prosecutions (DPP)
5. The Department of Foreign Affairs & Trade (DFAT)
6. The Department of Infrastructure & Transport
7. The Australian Communications and Media Authority (ACMA)
8. The Prime Minister's Department
9. The Australian Federal Police (AFP)
10. Summary & Conclusions

1. INTRODUCTION

In Australia, the *Freedom of Information Act* is presented as the vehicle to enable the public to access information held by the government. It is styled as follows:

"The objects of the Freedom of Information Act 1982 (the FOI Act) are to give the Australian community broad access to information held by the Government by requiring agencies to proactively publish certain information and giving citizens a right of access to Government held documents. Information held by the Government is to be regarded as a national resource and treated accordingly."
(Attorney-General's Department)

"The Commonwealth's FOI Act applies only to the federal public sector."
(Department of the Prime Minister and Cabinet)

Access to information, through the FOI Act, has been heralded by a number of politicians as a fundamental principle of democratic freedom.

SCHAPELLE CORBY

It is difficult to imagine a more clear case of a citizen in desperate need of access to information held by government.

As revealed by *The Expendable Project*, and earlier research, the Australian government was central to a substantial series of events which are disturbing in the extreme.

Formal *Freedom of Information* requests were therefore made, on her behalf, to a variety of federal departments and agencies.

However, as the following sections will demonstrate, they used a variety of means to deny Schapelle Corby access to material about herself, including information which may have been critical to her welfare and the protection of her human rights.

Whilst these measures were initially *ad hoc*, and generally conducted on a department by department basis, it became increasingly clear that a degree of collusion was developing.

The net result was that, in practice, Schapelle Corby's legal rights to access information were denied.

In this most pressing of cases, the *Freedom of Information Act* was shown to be nugatory, and subject to pre-meditated and systemic abuse.

2. THE ABC

The ABC is part of the federal public sector, and is thus demonstrably within the provision of this legislation. However, when a formal *Freedom of Information* request was submitted on behalf of Schapelle Corby, late in 2010, the following response was forthcoming:



The ABC had simply exempted itself from the *Freedom of Information Act*.

In response to a complaint about this, they elaborated as follows:

In your emails, you asserted that the FOI Act did not contain any specific provision to exclude program-related material from the scope of the FOI Act, and you suggested that the FOI Act required a full schedule be prepared describing the documents held by the ABC and specifying the relevant exemptions.

Decision in response to your request

Having reviewed your request, I have decided to refuse access on the basis that any documents dealing with the making and broadcast of ABC programs, and relating to any actual or potential complaints or litigation about these programs, fall outside the operation of the FOI Act as these documents relate to program material (section 7(2) and Schedule II, Part 2).

However, as the ABC broadly exist to produce and broadcast programs, all the information they hold must therefore be "*program-related material*", which is thus, according to them, exempted.

The ABC even refused to provide a list of the material it held:

No obligation to provide a schedule of documents

Section 24(5) of the FOI Act makes it clear that I am not required to locate, identify and describe any documents where it is apparent from the nature of the documents described in an FOI request that they are all exempt.

This provision alone makes it impossible to challenge any specific decision regarding disclosure, as only ABC personnel are aware of the actual material which exists and has not already been destroyed.

The ABC simply exempted itself from providing any information at all. With respect to Schapelle Corby, they exempted themselves from the *Freedom of Information Act*, and effectively, from Australian law.

Consequently, the ABC is free to state whatever it wishes, and hold and use any information whatsoever, in absolute secrecy. This applies regardless of the nature of the information, embracing wholly false and politically or maliciously created data.

The ABC is wholly unaccountable with respect to Schapelle Corby.

STRATEGY & APPROACH ADOPTED

The ABC exempted itself entirely from the *Freedom of Information Act*.

3. CUSTOMS & BORDER PROTECTION

By 2011 Schapelle Corby's serious mental illness was well known. She had been diagnosed by one of Australia's most eminent psychiatrists in 2009, and stories of her deterioration regularly appeared in both print and broadcast media. Mercedes Corby was therefore granted *Power of Attorney* over her affairs. The official documentation confirming this accompanied all FOI requests.

Customs' opening gambit was to ignore this, and instead, place new and difficult requirements upon both Mercedes and Schapelle Corby, in order to proceed:

I refer to Mrs [REDACTED]'s request for access to documents on behalf of Ms Schapelle Corby under the FOI Act.

In order to commence processing the request, Customs and Border Protection must be satisfied that it has appropriate authority to release personal information relating to Ms Schapelle Corby to either yourself or Mrs [REDACTED]. Customs and Border Protection notes that you have granted authority (under an enduring power of attorney from Ms Schapelle Corby) for Customs and Border Protection to release personal information relating to Ms Schapelle Corby to Mrs [REDACTED].

We note that the attorney's powers relating to personal matters is limited to circumstances where Ms Schapelle Corby has impaired capacity. We further note that under the *Powers of Attorney Act 1988*, Customs and Border Protection has the ability to request that evidence be provided of Ms Corby's impaired capacity.

However, in order to simplify the process, Customs and Border Protection was wondering whether, notwithstanding your sisters current incarceration, it may still be possible for Ms Corby to sign a consent for Customs and Border Protection to release all documents relating to her request under the FOI Act to you or Mrs [REDACTED] directly at a nominated address?

This would mean that the multiple consents would not be required and clarification of the extent of Ms Schapelle Corby's capacity for the purposes of the Powers of Attorney Act would not be necessary. (We note that on 1 November 2010, the FOI Act was amended so that an applicant no longer needs to reside in Australia in order to make a valid request for access to documents under the FOI Act). We have attached a consent for the release of documents for this purpose.

Should Ms Schapelle Corby be unable to sign the attached consent (or a similar consent), Customs and Border Protection will require further information/evidence that Ms Corby has impaired capacity for the purposes of section 33(4) of the Powers of Attorney Act 1988 so that the power of attorney may be exercised for a personal matter.

Should you require any further information or assistance, please do not hesitate to contact me.

Mercedes Corby was forced to try to explain to her mentally ill sister that she needed to sign a consent document, in relation to matters which she almost certainly did not fully comprehend.

[Customs & Border Protection Service]

However, having jumped through the hoops, the outcome was as follows:



Australian Government
**Australian Customs and
Border Protection Service**

Customs House
5 Constitution Avenue
CANBERRA ACT 2601

File No: 2011/002286-02

Ms Mercedes Corby
C/o - Rosleigh Rose

Dear Ms Corby

Request for Access to Documents - Freedom of Information Act 1982

I refer to your request dated 14 January 2011 in which you have sought access to, on behalf of Ms Schapelle Corby, all documents held by the Australian Customs and Border Protection Service (Customs and Border Protection) that relate to Ms Corby under the *Freedom of Information Act 1982* (FOI Act).

This letter is to inform you of my decision in relation to your request and your rights in respect of it.

Decision on Access

I am an authorised decision maker under section 23 of the FOI Act.

My decision in this matter is to release 11 documents in full without deletions.

The reasons for my decision are set out in **Attachment A** to this letter.

A schedule of these documents is at **Attachment B** for your reference.

Your Review Rights

The FOI Act grants you rights to have my decision reviewed. Those rights are set out in **Attachment C** to this letter.

Contact

Should you wish to discuss my decision, please do not hesitate to contact Ms Emily Winch, Customs and Border Protection's FOI Coordinator on 02 6275 5621 or via email at FOIcoordinator@customs.gov.au.

Yours sincerely



Terry Wall
Australian Customs and Border Protection

04 February 2011

[Customs & Border Protection Service]

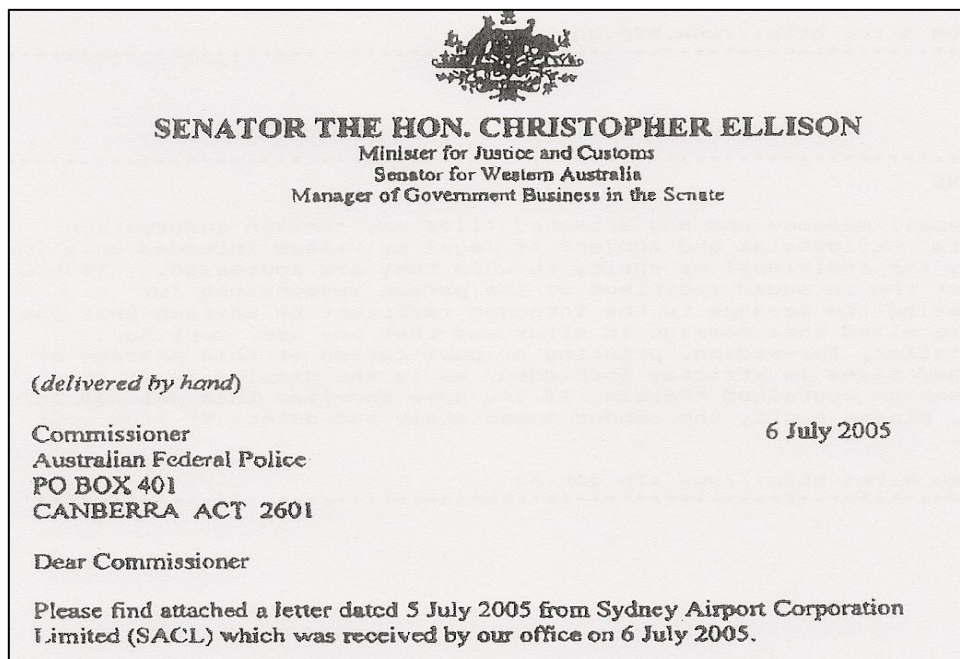
Customs claimed that they had identified just 11 documents. This was confirmed again in an email dated 1st March 2011:

As stated in Customs and Border Protection's decision dated 4 February 2011, the agency located 11 documents in full that fell within the scope of the request. These documents were located after conducting searches of the records held by the agency.

The 11 documents listed were not of huge significance, and were largely public domain.

However, it was already known that Customs held a substantially greater number of documents than this.

A simple check of materials obtained through other channels readily identified a number which were omitted, including extremely significant items such as the following, a letter in which the minister for Justice and Customs discusses primary evidence which was withheld from Schapelle Corby during her trials:



One would assume that significant correspondence between a Minister of State and the Commissioner of the Australian Federal Police, relating to the role of Customs at Sydney airport, would be retained and archived, and never deleted. One would also assume that this correspondence would be held within Customs itself.

Equally, given its gravity, one would assume that it is filed and accessible.

Another example follows, this time to a party external to the government:

[Customs & Border Protection Service]



It is thus difficult to understand why this would not be held within the department pertinent to the issue, which Christopher Ellison was the minister for. Equally, it is difficult to comprehend how even a cursory search could overlook this, as well as other correspondence and material like it.

A complaint was thus lodged, and an internal review requested, as confirmed below:



The outcome remained unchanged.

STRATEGY & APPROACH ADOPTED

Critical and important material, which was known to exist, was not provided or acknowledged.

Barriers and hurdles were created, including the disputing of legal documentation which was witnessed by another government department.

4. DIRECTOR OF PUBLIC PROSECUTIONS

As with several other departments, the DPP's first attempt to divert the FOI request was to contend the legal documentation provided:

With respect to the Power of Attorney (POA) and the letter of authorisation from Ms Mercedes Corby, the CDPP has formed the view that they have no legal application and do not entitle you to make a valid request on behalf of Ms Schapelle Corby. In accordance with Clause 8, the POA only takes effect if and when Ms Schapelle Corby loses capacity. At present the CDPP does not have available any evidence establishing that Ms Schapelle Corby is incapacitated. Being overseas and/or incarcerated does not fall within the definition of incapacity provided for in Schedule 3 of the *Powers of Attorney Act 1998* (Qld).

Given the CDPP's view that the POA and accompanying letter of authorisation from Ms Mercedes Corby do not allow you to make a valid request on Ms Schapelle Corby's behalf, if you are able to respond to us within the 14 day period noted above, to rectify the application, we would treat the revised application as an FOI request for documents relating to Ms Schapelle Corby made on your own behalf.

Like the other departments, this was done with full knowledge of Schapelle Corby's serious mental illness and grave circumstance. It should be noted that the POA is a formal legal document, and was confirmed and witnessed as such by the Australian Consulate in Bali.

In addition, they demonstrated their indifference and insensitivity further by suggesting that Schapelle Corby may wish to send a request by email herself:

For your further information, under the new amendments to the Act, which commenced on 1 November 2010, an FOI application can now be made via email, the practical result being that a person can make an FOI request from anywhere in the world as long as a return email address is provided in the application, so that notices that may be required under the Act can be sent to that email address. Accordingly, Ms Schapelle Corby may wish to make an FOI request on her own behalf.

In response to this, the situation was explained thus:

Regarding the request itself, Schapelle Corby is not able to make a request on her own behalf. Again, as you must surely be aware, Schapelle is mentally ill, having been diagnosed by one of Australia's most eminent psychiatrists. It must also be clear that she does not have access to a computer, or an email account.

She is incarcerated in a squalid prison cell, in horrendous conditions, suffering a serious and deteriorating mental illness

Mercedes Corby was, once again, forced to manage a series of administrative tasks, visit the consulate, and engage her seriously mentally ill sister in matters which can only have confused her.

As if these were not enough, even more barriers were created:

In accordance with section 15(2)(b) of the Act an applicant is required to provide such information concerning the document(s) requested as is reasonable necessary to enable a responsible officer of the agency to identify it. At present, the scope of your request is too wide to enable the identification of any documents. Accordingly, the CDPP intends to refuse access on the basis that you have provided insufficient information for any documents to be identified, pursuant to section 24AA(1)(b) of the Act.

To rectify the application, you need to provide more information about the exact document(s) you wish to access. It is important to note that the CDPP is not required, under the FOI Act, to compile information in order to create a document or documents that satisfy your request. The CDPP is only required to provide access to actual documents in our possession at the time an FOI request is received.

Here, the DPP were demanding that Mercedes Corby identify the documents they actually held, in advance of considering their release.

Clearly, this was an impossible task, as the response explained:


This is neither possible, nor tenable. Citizens outside the DPP itself have little idea what documents or material you create. We do not have knowledge of what letters have been written, emails sent, or notes made. We have no basis upon which to identify particular items or materials within the DPP.

Surely you must be aware of this?

Your response essentially prohibits the proper application of the *Freedom Of Information Act* to your department. I would therefore urge you to escalate this as a matter of urgency, perhaps also to the *Minister for Privacy and Freedom of Information*.

Whether the minister was contacted, or not, is not known, but the subsequent response is provided below:

Page 1:


DPP
Commonwealth Director of Public Prosecutions

Your reference:

Our reference:

10 February 2011

Dear [redacted],

I refer to your letter dated 13 January 2011 and your subsequent email to the CDPP on 1 February 2011 in which you made a request for access to information pursuant to the *Freedom of Information Act 1982* (Cth) ("the Act").

Specifically, you requested access to:

- *"All internal correspondence;*
- *All external correspondence with all third parties;*
- *All emails: incoming and outgoing;*
- *All internal electronic and recorded communications;*
- *Papers, scripts, minutes, notes, and all other items;*
- *Any other material pertaining to Schapelle Corby in any format."*

In accordance with your further email we have interpreted your request as seeking every document both physical and electronic in the possession of the CDPP pertaining to Ms Schapelle Corby. The CDPP has now had the opportunity to conduct a search of our databases nationwide, and have located approximately 25 files directly relating to Ms Corby containing some 7,500 documents and has proceeded on this basis.

In addition to these documents, given the breadth of 'pertaining' the CDPP cannot rule out holding other material that may pertain to Ms Corby on other files generally. In order to ascertain if such material was held on other files it would be necessary for a wide ranging search of CDPP records to be undertaken. It was this aspect which was referred to earlier in our earlier letter in relation to identifying documents.

In light of the number of documents located, the CDPP considers that the time and resources both in Canberra and Brisbane that would have to be expended on processing your claim would substantially and unreasonably divert the resources of the agency from its other operations.

In reaching this view the CDPP has had regard to:

1. The number of staff and staff hours that would be required to identify, locate and collate the documents within the filing system utilised by this agency;

Page 2:

2. The time resources required by senior prosecution staff to decide whether or not access to the documents located should be given, including the time and resources required to consult with third parties; and
3. The resources required to make copies or edited copies of the documents located.

In accordance with section 24AB(2) of the Act we therefore notify you of our intention to refuse access to the documents requested on the basis that processing such a request would substantially and unreasonably divert the resources of the CDPP from its core operations.

I note that the relevant provisions provide that you have 14 days from the receipt of this letter in which to consult with the CDPP and in this consultation period you must perform one of the following three actions:

1. Withdraw the request;
2. Make a revised request; or
3. Indicate that you do not wish to revise your request.

May I again indicate that the CDPP is of the view that the Power of Attorney you have referred to and the letter of authorisation from Ms Mercedes Corby do not enable you to make a valid request on behalf of Ms Schapelle Corby.


In accordance with Clause 8, the Power of Attorney only takes effect if and when Ms Schapelle Corby loses capacity. In this regard the CDPP has not been provided with any evidence establishing that Ms Schapelle Corby is incapacitated in accordance with Schedule 3 of the *Powers of Attorney Act 1998* (Qld). I note that being overseas and/or incarcerated does not fall within the definition of incapacity provided for in Schedule 3. There is also a further issue in relation to the operation of the purported letter of authorisation to enable a request to be made on behalf of Ms Corby by you.

Accordingly, the CDPP has considered this matter on the basis of your making the request on your own behalf rather through the operation of the Power of Attorney and the letter of authorisation.

To further discuss the application you can contact the writer by telephone on (02) 6206 5649, by email at inquiries@cdpp.gov.au or by letter to GPO Box 3104, Canberra ACT 2601.

As noted above, if contact is not made with this Office by 24 February 2011, then the CDPP will consider this application withdrawn.

Yours sincerely,



Benjamin Sangster
For Director

The DPP was now admitting clearly that they held "*25 files directly relating to Ms Corby containing some 7,500 documents*".

One might consider that Schapelle Corby had every right to know why they held so much material, and what was in it, but the DPP were denying access on the basis that provision of the information would cause too much work for them.

They again stated that they were refusing to accept the Power of Attorney, despite previous correspondence urging them to contact the Australian Consulate, who actually witnessed it.

The response given, made these points directly:

Friday, February 11, 2011

Dear Mr Sangster,

Thank you for your letter of 10th February 2011. Regrettably, the contents are not only disappointing, but disturbing.

You are surely aware that Schapelle Corby's case is an exceptional one. You are also surely aware of her grave circumstances, as well as the many aspects of her case which are widely considered to be serious from a public interest perspective, and sometimes a matter of concern with respect to the role of the DPP, including the political dimension.

A refusal to accept a Freedom Of Information request, to enable some transparency, would clearly increase that concern.

I also find employing resourcing related rationale to reject the request to be somewhat difficult to comprehend, given that the DPP created most of the information in the first instance. Many would also argue that the effort required is actually commensurate with the degree of censorship you intend to apply. Again, surely the public interest dictates openness.

I am therefore requesting that you reconsider your decision in the light of the clear public interest prerogative.

Another point in terms of scale is that Schapelle Corby surely has every right to know why the DPP holds more than 7,500 documents on her, and what they are. This is a basic democratic right enshrined in legislation, via the FOI act. The DPP's efforts to deny this right is a concern in principle, even disregarding Schapelle Corby's situation and the DPP's prior Involvement in it.

I also note that you appear to have withdrawn your impossible requirement that we should identify the actual documents you hold in advance of making a request. Clearly, this would demonstrably have prohibited the proper application of the Freedom Of Information Act to your department. You now seem to have simply substituted a different set of rationale for your rejection, which in itself is of concern.

Regarding the request, which was and remains on behalf of Schapelle Corby, I would repeat the words from my previous correspondence:

"Schapelle Corby is not able to make a request on her own behalf. Again, as you must surely be aware, Schapelle is mentally ill, having been diagnosed by one of Australia's most eminent psychiatrists. It must also be clear that she does not have access to a computer, or an email account.

She is incarcerated in a squalid prison cell, in horrendous conditions, suffering a serious and deteriorating mental illness. Yet you really expect her to initiate a Freedom Of Information request in Australia? That is neither reasonable, nor possible.

Mercedes Corby was granted Power of Attorney for this reason, a fact which you can confirm directly for yourself via the Australian Consulate in Bali. As Power of Attorney, Mercedes Corby is entitled to act on Schapelle Corby's behalf in this matter, and is entitled to appoint myself to act on her behalf in Australia.

I suggest, therefore, that in the first instance you contact the Consulate who will clarify the position for you."

It would appear that you entirely disregarded this, and that you haven't contacted the Australian Consulate in Bali. I also find your efforts to further burden a person in that state of health, and in those harrowing conditions, to be appalling.

As you do not appear to appreciate how disturbing your position is on any of these matters, I would urge you to escalate this to the appropriate level, and discuss it with the Minister for Privacy and Freedom of Information.

Even outside the context of the DPP's previous roles in this case, your position creates significant concern, with respect to both private and public interest. I again urge you to adhere to the letter and spirit of the nation's Freedom of Information legislation, and to discuss the issue with appropriate ministers.

I look forward to hearing from you shortly.

Yours Sincerely

[The Director Of Public Prosecutions]

Unfortunately, the DPP did not engage at all on any of the points made in this correspondence. They simply ignored them.

Their reply detailed their decision:

Authorisation

I am a person authorised by the Director of Public Prosecutions to make decisions on requests for access to documents under the FOI Act. My name and position are:

Mark de Crespigny
Senior Assistant Director

In accordance with section 24AB of the FOI Act you were informed that this Office intended to refuse access to documents on the basis that the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

After considering your reply dated 15 February 2011, I have proceeded on the basis that you do not wish to revise your request. Accordingly, I am satisfied that the *practical refusal reason*, being that processing the request would involve a substantial and unreasonable diversion of this agency's resources, still exists, and I have therefore decided to refuse access to documents identified in accordance with section 24(1)(b) of the FOI Act.

The request was rejected on the basis that it involved too much work. Schapelle Corby was flatly denied the right to know why the DPP held such an extraordinary amount of information on her, and what it constituted.

STRATEGY & APPROACH ADOPTED

The DPP created a myriad of barriers and hurdles, including disputing legal documentation witnessed by another government department.

They created an impossible requirement (identification of some 7,500 documents).

They refused to engage discussion or debate.

They claimed that the exercise of fulfilling a legal and democratic right constituted too much work.

5. DFAT

The freedom of information request submitted to DFAT was met with a similar attempt to contest the Power Of Attorney held by Mercedes Corby:

Power of Attorney for Schapelle Leigh Corby

Attached to your FOI request was a partial copy of a Power of Attorney document, as well as an authority dated 13 December 2010 from Mercedes Pearl Corby.

In order to confirm your Authority in this matter we require a certified full copy of the appropriate Power of Attorney to be provided. Please ensure it is the full Power of Attorney which indicates the powers and limitations bestowed upon you. Unfortunately the copy previously provided was an excerpt only and was not certified.

DFAT continued to cite their unwillingness to accept the legally validated *Power of Attorney*, even when provided with the full copy. In their eagerness to manufacture an obstruction, DFAT appeared to overlook the fact that the *Power of Attorney* had actually been legally witnessed by DFAT themselves, via the Consulate in Bali:

**PART 2
FOR THE WITNESS**

Your role goes beyond ensuring that the signature of the principal (the person giving the power) is genuine. You certify that the principal appeared to understand the nature and effect of the document, including the matters stated in Clause 8 (Statement of Understanding). In the future, you may have to provide information about the principal's capacity to understand these matters when giving the power. If you are doubtful about the principal's capacity, you should make appropriate inquiries, e.g. from the principal's doctor.

It is strongly recommended that, if you are in any doubt, you make a written record of the proceedings and of any questions you asked to determine the principal's capacity.

WITNESS'S CERTIFICATE
Complete this form by writing on the lines and ticking the appropriate boxes.

9. I, Melinda Rio, Consul, Australian Consulate-General
[Print your full name here] Bali

state that –

(a) I am a:

☐ justice of the peace

☐ commissioner for declarations

☐ lawyer

☒ notary public,

(b) I am not:

– an attorney for the principal

– or a relation of the principal or of the principal's attorney

(c) (tick **one** box only)

☒ I am not a current paid carer or health-care provider for the principal

☐ I am a current paid carer or health-care provider for the principal, but this enduring power of attorney appoints an attorney/s for financial matters only.

Note: 'Paid carer' does not mean someone receiving a carer's pension or similar benefit.

(d) (tick **one** box only)

☒ the principal signed this enduring power of attorney in my presence

☐ in my presence, the principal instructed a person to sign this enduring power of attorney for the principal, and that person signed it in my presence and in the presence of the principal,

and

(e) at the time that this enduring power of attorney was signed, the principal appeared to me to understand the matters stated in Clause 8.

[Signature] 24/9/9

[Witness signs here] [Witness writes the date here]

11

In addition, DFAT extended this burden by requiring consultation with the father of Schapelle and Mercedes Corby, or his Executor. That Michael Corby Senior was deceased, was a fact which DFAT were well aware of.

Authority to receive information relating to Michael Corby Senior

Because your request includes information relating to another individual (Michael Corby Senior), DFAT will be required to consult with that individual, or in the case of a deceased person, the executor of their estate. We request that you provide to our office an Authority to act on his behalf or in the alternative any contact details of the individual or his personal legal representative.

Fortunately, Mercedes Corby was also the Executor of his estate, but this nonetheless imposed further burden upon her, in addition to her role of visiting and nursing her sister, on an almost daily basis.

However, the efforts exerted by Mercedes Corby in addressing these matters proved to be fruitless, as DFAT simply rejected the request on the basis that it created too much work for them:

As currently framed, DFAT intends to refuse the request, on the grounds that the work involved in processing it would substantially and unreasonably divert DFAT's resources from its other operations.

Practical refusal reason

Notice is hereby given under s24AB(2) of the FOI Act of an intention to refuse to grant access to the documents sought. The practical refusal reason is that the work involved in processing the request would substantially and unreasonably divert the resources of DFAT from its other operations.

Again, it emerged that a government department held an enormous number of documents on Schapelle Corby:

Time required to process your request

On advice from the relevant line area, your request as it currently stands would capture approximately 6100 pages of material in one part of the Department in Canberra alone. I have formed the view that over 28 hours of staff time would be required to draw together the relevant documents; I must have regard to this under s. 24AA(2)(a).

Their decision, like that of the DPP, was to deny Schapelle Corby the right to know why they held such an extraordinary amount of information on her, and what it constituted.

Despite the blunt nature of their response, an effort was made to accommodate DFAT, by breaking down the request into smaller units:

Given the matters you raise, perhaps it would assist if I prioritized the request. Could you, perhaps, handle the request if tackled by date and area?

For example, in the first instance perhaps you could provide the information you hold from years 2004 and 2005? Initially, all the information involving Mr Alexander Downer. Thereafter the Consulate in Bali.

This is perhaps a reasonably small sized project which would cause you no difficulties in terms of scale or prompt timescale. Are you able to proceed with that, whilst the rest of the request is discussed? I am also prepared to place a second FOI request for this project, on the basis that you would attend to it urgently.

Even this proved to be futile, and was rejected outright by DFAT, as follows:

- > Having said this, I would now like to address your letter of 2 February 2011, which proposed alternative scope for your FOI request. You indicated
- > in that letter that you would be prepared to submit separate FOI requests
- > to enable the material you were requesting to be covered in separate
- > pieces. You also indicated that you could prioritise the FOI request for us
- > and initially request only the documents from certain years which would
- > fall within your overall request, before proceeding to request documents
- > covering the rest of the period of interest to you.
- >
- > I draw your attention to section 24(2) of the FOI Act. Under the Act, in
- > considering possible grounds for a practical refusal, I am entitled to
- > consider two or more requests as a single request if the requests relate to
- > documents the subject matter of which is substantially the same. Separating
- > your request into multiple parts - whether in the form of separate requests
- > or in the form of prioritising the overall request into segments will not
- > reduce the overall practical burden of responding to your FOI request,
- > which would still be the same size in total.
- >
- > Therefore, in light of the fact that you have not significantly narrowed
- > the original request, I now advise formally of the decision to refuse your
- > FOI request, on the basis that processing your FOI request would
- > substantially and unreasonably divert the resources of the agency from its
- > other operations.

STRATEGY & APPROACH ADOPTED

DFAT created a number of barriers and hurdles, including disputing legal documentation witnessed by the Bali Consulate, which is a part of DFAT itself.

They claimed that the exercise of fulfilling a legal and democratic right was too much work.

They flatly rejected a proposal to submit the request in smaller units.

6. DEPT OF INFRASTRUCTURE & TRANSPORT

In 2003, Allan Kessing wrote two reports on Sydney airport security, which included, amongst other things, information about drug trafficking. When these were leaked to the media a few days after Schapelle Corby's trial, the government accused him of whistle blowing and pursued him relentlessly.

As information relevant to Schapelle Corby might be held, a *Freedom of Information* request was submitted to the Department of Infrastructure and Transport, with the blessing of Allan Kessing himself.

The result of this FOI was, predictably, the censorship of the vast majority of information, including everything which might assist. What was left was, by and large, nonsensical and meaningless.

But, this wasn't all. The Department of Infrastructure and Transport even censored information which was feely available in the public domain.

Take the following segment:

OTS	9/2/10	119	Senator XENOPHON	Senator XENOPHON—But you were not shown a copy of the report that was prepared by Mr Kessing in 2003, by Customs. You only became aware of it in 2005. Mr Wilson—I would have to take that on notice. In 2003, I do not believe any of the officers sitting at the table were involved in the Office of Transport Security.

Here is exactly the same information, the openly accessible 'Questions on Notice Additional Budget Estimates 2009-2010', from the parliamentary internet site.

OTS 05	9/2/10	119	Senator XENOPHON	<p>Senator XENOPHON—Perhaps on notice if you could provide some further details of the date upon which the AFP and Customs were provided with details.</p> <p>Mr Retter—As I said, they were provided with the report on 18 September. I can advise whether we received a response from them.</p> <p>Senator XENOPHON—But on notice can you provide who it was sent to and the covering letter? Would that be a difficulty?</p> <p>Mr Retter—I am sure we can check and take it on notice.</p>
OTS 06	9/2/10	119	Senator XENOPHON	<p>Senator XENOPHON—But you were not shown a copy of the report that was prepared by Mr Kessing in 2003, by Customs. You only became aware of it in 2005.</p> <p>Mr Wilson—I would have to take that on notice. In 2003, I do not believe any of the officers sitting at the table were involved in the Office of Transport Security.</p>
OTS 07	9/2/10	121	Senator ABETZ	<p>Senator ABETZ—Unfortunately, I think that has escaped us for this round of estimates. Minister, when was it determined that this course of action, as announced today, would be undertaken?</p> <p>Senator Conroy—I would have to take that on notice.</p>
OTS 08	9/2/10	121	Senator ABETZ	<p>Senator ABETZ—Thank you for that terminology. When did they last meet?</p> <p>Mr Mrdak—I would have to take that on notice. I would have to take advice as to whether the government normally discloses the dates of cabinet meetings.</p>
OTS 09	9/2/10	121	Senator ABETZ	<p>Senator ABETZ—I do, indeed. Noting the lack of pro-disclosure culture here, I would have thought that your department, being intimately involved in this, may have had some understanding of the processes. So if we can then take on notice when that committee last met—</p> <p>Mr Mrdak—I will certainly take that on notice and seek advice from the National Security Adviser in relation to—</p> <p>Senator ABETZ—That would have been the final sign-off then of the decision that was announced today.</p> <p>Mr Mrdak—I will take advice in relation to the decision-making process from the National Security Adviser.</p>
OTS 10	9/2/10	122	Senator ABETZ	<p>Senator ABETZ—When were you advised of the committee's decision and that you might have to get things in place for this announcement?</p> <p>Mr Mrdak—Again, I will take that on notice. Certainly, as I have mentioned, the government has been considering these issues for the last few weeks—</p> <p>Senator ABETZ—We know that.</p> <p>Mr Mrdak—in relation to this report. I will take on notice the government practice—which I am not familiar with, in terms of the National Security Committee—in relation to what information is provided on their meetings and when their conclusion of those is normally advised. I will take that on notice and come back to you as soon as I can.</p>
OTS 11	9/2/10	122	Senator ABETZ	<p>Senator ABETZ—Are you able to tell us when he went to those various meetings?</p> <p>Senator Conroy—No, we are not. No-one is in the habit of releasing dates of cabinet meetings, particularly meetings of the National Security Committee of Cabinet.</p> <p>Senator ABETZ—Even after they occurred? I would ask you to take that on notice—</p> <p>Mr Mrdak—We will take it on notice.</p>

In this example, there were 20 pages of public content carefully blanked out. This was replicated in document after document.

All this material was presented to everyone in the world via the internet, but for representatives of Schapelle Corby, a government bureaucrat had spent hours, at tax payer's expense, using a black pen to hide it.

STRATEGY & APPROACH ADOPTED

Selective, extreme and unjustified censorship.

7. ACMA

Over a period of seven years, the ACMA has overseen and endorsed a multitude of broadcasting media incidents which have breached all levels of decency and civilised behaviour, with respect to Schapelle Corby. These have even included abuse of Schapelle Corby's human rights in her own prison cell.

A *Freedom of Information* request was therefore submitted on behalf of Schapelle Corby, to retrieve information regarding the ACMA itself, and details of their interactions with the offending broadcasters. It is worthy of note that the ACMA has, to this day, supported the broadcasters in every single complaint ever submitted.

Regrettably, the ACMA's position was every bit as obstructive as the other government agencies.

TOO MUCH WORK

Their initial response employed the “*too much work*” device:

As you can appreciate, the FOI Act imposes quite tight timeframes upon government agencies in relation to processing FOI requests. While we are waiting for further clarification from you as to the scope of your request, the ACMA will be unable to progress this request. **Upon receipt of this notice the period for processing your request is suspended.**

Intention to refuse access

Pursuant to subsection 24(1) of the FOI Act, the ACMA may refuse to deal with a FOI request where a “practical refusal reason” exists in relation to the request. A practical refusal reason exists where the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

Before making any decision to refuse to deal with an FOI request on these grounds, the ACMA must undertake a consultation process with the FOI applicant. This letter is to inform you of the ACMA's intention to refuse access to the documents you have requested on the basis that the work involved in processing such a broad request would substantially and unreasonably divert the resources of the ACMA from its other operations.

Practical Refusal Reason

A broadly worded request such as the one made by you on 8 December involves a significant amount of work to process. An initial search of the ACMA's electronic filing system “TRIM” has been undertaken, and ACMA officers advise me that they have identified upwards of 600 documents, totalling approximately 3000 pages, falling within the scope of your request as it is currently worded.

For this reason, I consider that processing a request of this size would be a substantial and unreasonable diversion of the resources of an agency the size of the ACMA away from our normal operations. If you are unable to narrow the scope of your request, the ACMA may decide to refuse to process this request on the basis of this practical refusal reason. Consequently, I would be grateful if you could advise the ACMA in writing as soon as possible whether you wish to clarify your request.

Like a number of other departments, the ACMA were seeking to exclude material by presenting an impossible proposition: that Schapelle Corby's representative eliminate most of the material, without even knowing what it pertained to. The ACMA refused to identify the documents.

As the ACMA were the only party aware of the contents of this material, this strategy effectively created a position in which they were able to censor freely, unhindered and undetected. This is precisely what transpired:

You were advised, by Notice given under section 24AB of the FOI Act, on 23 December 2010 that the ACMA may be unable to process the request as it would substantially and unreasonably divert the agency's resources from its other operations, and the ACMA may consider refusing the request under subsection 24(1) of the FOI Act.

You confirmed by email to Ms Kath Silleri of the ACMA that this was the scope of your request on 27 December 2010 and 8 January 2011. The ACMA decided

to process your request and informed you of the process for undertaking third party consultation on 17 January 2011.

The ACMA located a total of 600 documents as a result of initial searches conducted. The ACMA has subsequently undertaken further review of the initial material located and decided that 177 documents 'relate to' Schapelle Corby and cover the requested period.

Of the 600 documents within the scope of the request, they unilaterally dismissed 423 of them. A complaint was therefore lodged:

["The ACMA's decision to include only 177 of the original 600 documents identified is of serious concern. It appears to be ad hoc, and indeed, no rational basis has been provided for the omission of any of the missing 423 documents.

Clearly, these were initially considered to be relevant. Thus, it is entirely reasonable to presume that a degree of censorship has occurred. Without notification of the content of the reports it is impossible to establish any other basis for this.

I would therefore request that the documents themselves are provided as originally identified, along with a full schedule."].

This was flatly rejected.

The *Hidden World Research Group* has since been independently informed that a number of the censored documents relate to complaints, made by proxies for the Howard government. These were made against those broadcasters who criticized the Indonesian judiciary, thus highlighting the human rights abuses that occurred throughout Schapelle Corby's trial.

INTERNAL CORRESPONDENCE

The material supplied by the ACMA was remarkably devoid of internal correspondence, or similar. This was pointed out as follows:

["We also find that there is little or no provision of material internal to the ACMA itself. For example, minutes, internal notes, memo's, emails, and similar. The ACMA would therefore have us believe that the matters raised within these complaints were not discussed internally, including between staff and officers, and between ACMA personnel and politicians."]

This issue was simply ignored.

BUSINESS INFORMATION

The ACMA further protected the interests of offending broadcasters by suppressing a range of data which they defined as '*business information*':

Section 11A(5) of the Act provides that an agency must give access to a conditionally exempt document, unless it would be contrary to the public interest to do so.

I have considered the factors for and against disclosure of the business affairs information. I have decided that in this particular circumstance, in relation to this particular information, the factors against disclosure outweigh the factors favouring disclosure.

The factors for disclosure are outlined in section 11B(3) of the Act. I do not consider that the disclosure of the business information will promote the objects of the FOI Act, inform public debate on a matter of public importance, or promote effective oversight of public expenditure.

It is noteworthy that they made no reference to any consideration for the interests of the requestor of this information, Schapelle Corby.

PUBLIC INTEREST

Even more alarmingly, the ACMA openly placed its own interests above public interest:

I consider that the disclosure of the information could reasonably be expected to prejudice the ACMA's ability to obtain similar information in the future and this in turn will impede on the ACMA's ability to carry out its functions or exercise its powers in the conduct of broadcasting investigations. I have decided that this factor outweighs any public interest that may exist in favour of disclosing this information.

The response to this was as follows:

["The ACMA seek to justify exemption on the basis that provision could prejudice the future supply of information to the ACMA. This is clearly placing the interest of the ACMA above the public interest. Indeed, the respondent states this directly: "I have decided that this factor outweighs any public interest that may exist in favour of disclosing this information".

.....

Ms Zurnamer is a public servant. The ACMA is supposed to serve the public. For the ACMA to place its own interests above the interests of the public it is supposed to serve, and by definition, the life and welfare of Schapelle Corby, is absolutely appalling. I request that this is escalated, as a matter of urgency, to the appropriate minister"]

Again, this was dismissed.

ANOTHER DEVICE

The ACMA also dismissed information pertaining to Schapelle Corby on the basis that she was not the main subject matter of the relevant broadcasts.

Some of the documents that were originally identified by the ACMA as possibly coming within the scope of your request contain information that I consider to be irrelevant to, or outside the scope of, your request. These documents contain information relating to broadcasting investigations conducted by the ACMA where the subject matter of the broadcasts was not Schapelle Corby. Therefore I do not consider that they are documents which relate to Schapelle Corby and are either outside the scope of your request or contain irrelevant information.

This was contended as follows:

["I would suggest that this route has been used to apply significant and wide scale censorship of relevant information. There is no provision which states that a Freedom of Information request is limited to broadcasts on which the main subject matter is the individual the request pertains to. The act embraces all information on the subject".]

As referenced earlier, some of these documents related to broadcasts pertaining to the Indonesian judiciary, and the disturbing nature of Schapelle Corby's Bali trial. This device, however, enabled complaints instigated by government proxies to remain hidden. It prevented disclosure of the pressure which the government applied to broadcasters, in pursuit of its relationship with Indonesia, and at Schapelle Corby's expense.

Yet again, the ACMA rejected any criticism of these disturbing manoeuvres. It continues, to this day, to support offending broadcasters, irrespective of the nature of the complaint (see *The Expendable Project* website), and continues to hide political agenda and intervention.

STRATEGY & APPROACH ADOPTED

The ACMA claimed that the exercise of fulfilling a legal and democratic right was too much work.

They created an impossible requirement in order to proceed (identification of some 600 documents).

Important material, which was known to exist, was withheld and not acknowledged.

They openly placed the interests of the ACMA above public interest.

They engaged in extreme censorship, using a number of unconstitutional devices.

8. THE PRIME MINISTER'S DEPARTMENT

Given the vocal commitment to the *Freedom of Information Act*, a request was submitted to the Prime Minister's Department with more optimism than most.



However, its fate was familiar, with the original request rejected:

Ms Guise has concluded that identifying, collating and assessing the information sought would involve a very considerable amount of work, and this would substantially and unreasonably divert the resources of PM&C from its other operations in terms of subparagraph 24AA(1)(a)(ii) of the Act. I enclose relevant provisions of the FOI Act.

Pursuant to subsection 24AB(8) of the Act, the time period for processing the request is suspended pending either your confirmation of the current terms of the request or alteration of the terms following consultation sufficient to remove the grounds for practical refusal under section 24.

The most striking aspect of this, however, was the identity of the decision maker:

Authorised decision-maker

The decision-maker for your request is Ms Sarah Guise, A/g Assistant Secretary, Border, Counter-Terrorism and Strategic Planning Branch.

It is not known whether this is a normal state of affairs, but the counter terrorism reference was somewhat surprising.

STRATEGY & APPROACH ADOPTED

The Assistant Secretary of the Border, Counter-Terrorism and Strategic Planning Branch, claimed that the exercise of fulfilling a legal and democratic right was too much work.

9. THE AUSTRALIAN FEDERAL POLICE

Following an exceedingly long process, material was eventually released by the AFP in response to a formal request on behalf of Schapelle Corby. A subsequent request yielded the same type of result. This was characterised by extreme censorship:



This was a typical page, the sequence in the middle representing the reason for exemption (censorship).

This was the nature of most pages provided.

As for the rest, the vast majority were items which had already been published in the public domain, such as *media monitor* pages.

Essentially, almost all meaningful information was suppressed, and censored.

A range of reasons were provided, with the following being prominent:

Exemption/Public Interest Claimed	Reason	
Exempt: s33(1)(a)(iii)		<p><i>Disclosure of these documents would be contrary to the public interest.</i></p> <p><i>s.37(1)(b) Deletions are made on the grounds that disclosure would enable a third party to ascertain the identity of a confidential source of information.</i></p> <p><i>s.37(2)(b) Deletions are made on the grounds that release would disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.</i></p> <p><i>s.41(1) Deletions are made on the grounds that disclosure would involve the unreasonable provision of personal details of people other than the FOI applicant.</i></p>
Exempt: s33(1)(a)(iii)		
Exempt: s33(1)(b), s33(1)(a)(iii)	<p><i>s33(1)(a)(iii) Deletions are made on the grounds that disclosure would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.</i></p> <p><i>s.33(1)(b) Deletions are made on the grounds that disclosure would divulge information communicated in confidence by the authority of a foreign government.</i></p>	
Partial release: s41(1), s37(1)(b), s37(2)(b), s36(1)(a)	<p><i>s.36(1)(a) Exempted material is an internal working document of the AFP. Provision of these documents would disclose opinion, advice or recommendations prepared to aid the deliberative processes of the AFP.</i></p>	
		<i>s.22(1)(a)(ii) Exempted material would disclose</i>

Remarkably, the AFP were stating clearly that Schapelle Corby's right to access information about herself would damage the relationship of Australia with Indonesia.

They were also withholding information to hide the opinions and input of politicians, as well as senior AFP personnel, presumably to save the AFP from embarrassment, and prevent public disclosure of their actual role in the case.

Considered third party opinion, regarding the full list of exemptions, produced the following:

PUBLIC INTEREST

Throughout the decision Ms Matan referred to '*public interest*'. This has appeared in a range of contexts, but in almost all cases it amounts to opinion. Public interest is never actually defined, nor is its application to each specific scenario ever established, and certainly not in any detail.

Even more seriously, in many cases, the wholly ambiguous *public interest* cloak is used to protect AFP Interest, or even, the interests of individuals in specific posts or positions at the given time. The AFP's interests, and the interests of certain individuals, are not public interest at all. Indeed, in many cases these contradict each other.

This is probably a manifestation of the fact that decisions like these, which pertain to the activities of the AFP and its personnel, should not be taken from within the AFP itself. Whilst they are taken internally, it is inevitable that these conflicts of interest will arise.

In a situation in which the AFP are being openly and internationally accused of corruption, and of political complicity with a foreign state, with respect to the Schapelle Corby case, public interest is not best served by covering up information requested on behalf of Schapelle Corby herself.

In this situation public interest is best served through transparency, accountability, and in establishing the trust of the domestic and international public through openness.

These critical matters appear to pass Ms Matan and the AFP by completely. Public interest is not AFP interest, nor is it the interest of individuals. Public interest is clearly best served by the release of all the documents requested. I submit that these should be released with immediate effect.

SCOPE

I submit that the scope was not wide enough. For example, Ms Matan specified that she searched on keywords "*Shapelle Corby*", "*Schapelle Corby*", "*I Made Mangku Partika*" and "*Pastika*".

However, it is clearly evident that many other terms were pertinent, and perhaps more so. For example, given the hostility of certain parties to Schapelle Corby they tended to use the name "*Corby*" when referring to her. None of the searches above will have found these references, and the sources will therefore have been omitted.

I submit that this is an extremely serious and significant omission. I further submit that there are other serious omissions.

DOCUMENTED REASONS FOR NON-DISCLOSURE

I would also like to examine some of the reasons cited for censoring the information.

22(1)(a)(ii)

22 Deletion of exempt matter or irrelevant material

(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;

Ms Matan's comments are wholly subjective, and openly state that she has determined and decreed its irrelevancy. Yet this is an extremely complicated case, involving a myriad of complex issues, both international and domestic, which Ms Matan is not a party to, aware of, or has sufficient knowledge of.

I submit that Ms Matan is not best positioned to make this decision, and as such, should have erred on the side of disclosure, rather than secrecy.

33(1)(a)(iii)

33 Documents affecting national security, defence or international relations

(1) 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; or

There are a range of assumptions and value judgements in response here.

Ms Matan states that information was supplied with the expectation of confidentiality: blatantly assuming that the foreign state was not aware of Australian FOI legislation or Australian values. This is an assumption only, and there is no evidence to support it.

Ms Matan's value judgement is also that political expediency should trump the rights of Australian citizens with respect to information which relates to them. In this case, that political expediency should deprive a citizen who is seriously ill in a third world jail cell from information pertaining to her own case. One could even characterize it as political expediency trumps human rights.

That is Ms Matan's opinion only. I will refrain from commenting upon what I think of that, but I will state clearly that Ms Matan is not best positioned to make such a judgement, and should not be making it. This is particularly moot given the AFP role in some of the matters covered.

33(1)(b)

33 Documents affecting national security, defence or international relations

(1) 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.

Here, Ms Matan is, as an employee of the AFP, taking a decision to prioritize the position of the AFP above that of the rights of an Australian citizen.

That clearly contradicts any semblance of natural justice or reasonable application of balanced judgement. It is not a decision that should be taken from within the AFP, as the vested interest is self defined.

Again Ms Matan applies a value judgement: that political expediency trumps the rights and/or human rights of an Australian citizen. Ms Matan applies this position to this particular case, which could hardly be more acute with respect to the needs of the citizen.

33A(1)

33A Documents affecting relations with States

(1) Subject to subsection (5), 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 relations between the Commonwealth and a State; or

(b) would divulge information or matters 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 State agency or party referred to in Ms Matan's decision must itself be subject to Australian FOI legislation too. That State agency must also be well aware of the provisions of the act, and the rights of Australian citizens defined within. Ms Matan makes the assumption that the State agency is ignorant of these matters, which is simply not tenable. They would or should have been aware that disclosure was a possibility. This therefore appears to be another flimsy excuse to deny access to information.

Equally, again, a value judgement is applied: this time that AFP/State political expediency trumps the rights and/or human rights of individual citizens. Ms Matan applies this position to this particular case, which as stated previously could hardly be more acute with respect to the needs of the citizen.

36(1)(a)

36 Internal working documents

(1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act:

(a) would disclose 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; and

(b) would be contrary to the public interest.

(5) This section does not apply to a document by reason only of purely factual material contained in the document.

Via Ms Matan's decision she uses this clause to censor information on the basis that it is "*advice, consultation and opinion*".

This is clearly manufactured, as these aspects define the position of the decision makers in a *professional* capacity. The position of those involved in the case is important, and their statements define this position. Their words patently define a factual representation of their position.

Clearly this does not disclose any confidential information with respect to mechanics of operation. It defines the position of key players and the AFP. Ms Matan is unilaterally stating that the position of professional parties is not information; but it clearly is.

Also, the freedom to record opinions in confidence implies that they are not shared. The truth here is that they were shared. They were professional recorded opinions, relating to a member of the public. Refusal to disclose them implies that certain individuals can state anything at all with impunity, no matter how offensive or extreme their opinion may be.

Public interest is, in fact, vested in transparency, trust, and respect, which is not fostered by hiding the extreme or hostile position of public servants.

It appears that through inappropriately using this clause, Ms Matan seeks to avoid any embarrassment to the AFP, or to certain individuals.

And further, that even this self-interest mission trumps the rights of an Australian citizen with respect to access to information related to the applicant herself.

37(1)(b)

37 Documents affecting enforcement of law and protection of public safety

(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or

Ms Matan's decision indicates a misuse of this clause. Clearly, it cannot be reasonable that anyone can state anything about a third party, and that this is held in confidence on the basis of an AFP employee being tempted to decree that they stem from a confidential source.

The interests of the offended party should surely be given priority, except in extreme circumstances.

The proposition that an AFP employee should make an information release decision pertaining yet again to an AFP self-interest scenario is clearly flawed.

37(2)(b)

37 Documents affecting enforcement of law and protection of public safety

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;

I do not believe that this is a decision that an AFP employee can objectively make. Given the closeness to the functionality and culture of the AFP, preservation of AFP interests in this respect will inevitably take precedence. This is a value judgement which should be taken outside of the AFP.

40(1)(d)

40 Documents concerning certain operations of agencies

(1) Subject to subsection (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency; or

(2) This section does not apply to a document in respect of matter in the document the disclosure of which under this Act would, on balance, be in the public interest.

This again uses the cloak of public interest; undefined, and clearly confused with AFP interest and that of certain individuals.

The rights of the subject, who the requests for information are being made on behalf of, are invariably and consistently trumped.

The approach of claiming the need for confidentiality, without actually stating the specifics of that need - what the information actually is - is a common method of evasion. It is sometimes referred to as '*black box logic*', because it constructs a situation in which ignorance of the box contents makes those contents difficult to challenge.

However, the actual rationale used exposes the nature of the response. For example: "*The need for the agency to maintain the confidentiality with regard to the subject matter*".... what exactly is that need? Is it the need to avoid embarrassment? The need to hide the position of certain individuals? The need to hide corruption?

And "*if such information was disclosed, it may discourage external cooperation in AFP investigations*". No other explanation is provided. So why? Is what the AFP are actually doing and/or saying so damaging that external parties would be appalled?

Back to the core test: the interests of the AFP trump the rights of the citizen.

41(1)

41 Documents affecting personal privacy

(1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

This clause is quoted, but nowhere are the identities of the mysterious third parties provided.

However, despite this clear omission, there are clues: "*whether the information would shed light on the workings of the government*". Are we to deduce that the third parties whose *personal information* is to be protected are public figures, perhaps in government office? If so, then isn't there a public expectation of disclosure; a public right?

Again, '*personal information*' isn't defined. Clearly it isn't medical records or family history or data which really is personal information. One can only imagine that it is opinion again; the AFP seeking to avoid disclosure of an embarrassing position, via censorship of FOI output.

Yet again, the rights of the citizen requesting information relating to the applicant herself are trumped.

A formal review of the AFP's censorship position was requested, and a response based upon the above was submitted. Every point was ignored, and the censorship stood in its entirety.

The case was therefore taken to the *Administrative Appeals Tribunal* (AAT) where, under pressure, the AFP agreed to re-visit many of the above issues. However, they subsequently produced nothing of substance at all.

The following are extracts from the affidavit which was prepared in response to this failure:

2. The process has taken over a year to reach the current point. Throughout this period I have experienced lengthy delays and many unreturned phone calls, and a substantial number of my emails have been ignored. In the latter weeks I have forwarded emails to the AAT, who have kindly forwarded them to the AFP, soliciting a more timely response.
3. The documents provided by the AFP in response to the requests have been heavily censored, with hundreds of blank pages. Many documents have been exempted altogether. This includes material which has already been published in the public domain, and is available on internet websites, including the parliamentary website.
4. Throughout the process my impression has been that the agenda of the AFP has been to protect their own interests and reputation, rather than the public interest, and least of all, Schapelle Corby's interests. To achieve this they have used a wide variety of methods and devices, and have interpreted the Freedom of Information Act incorrectly, and certainly, not within its spirit or purpose.

5. Internal Reviews invariably supported the original AFP response on every issue and with respect to every document.
6. To exemplify this I produced a *Review Submission*, which is attached to this affidavit as Exhibit SLC1. This was presented at the AAT meeting on 16th March 2011. At the behest of the AAT the AFP undertook to revisit a number of aspects of the request. The AFP responses are included as Exhibits SLC2 and SLC3.
7. It is also clear that not all documents held by the AFP, which are within the scope of the request, have been identified within their schedule. I therefore requested one of these specifically, namely, a letter from DFAT of 7th December 2004. This has not been forthcoming. Additionally, a related letter from the Indonesian National Police (INP) of 17th January 2005 was exempted, despite the AFP publically stating what was in it: begging the question of how damage to international relations could ensue by release (unless the AFP was not truthful about its contents). See Exhibit SLC5.
8. In response to (6) and (7) the AFP provisioned just 12 further foils, some of which were already available in the public domain (see Exhibit SLC4). Nothing substantive was provided, and it appeared that the AFP had produced a token to give the impression of a conciliatory approach. They had, however, failed to take on board either my representations at the AAT on the 16th March, or the comments and statements of the AAT. See Exhibit SLC6.
9. I would submit again the Review Submission, Exhibit SLC1, as the AFP response neither addresses nor counters any of the serious and important issues raised therein.

At this point, the AFP engaged a prestigious Sydney based firm of lawyers, Clayton UTZ.

In effect, they were directly using substantial sums of tax payers' money to seek to prevent Schapelle Corby from accessing the information they held on her.

The close relationship of Clayton UTZ with the Howard Government is also worthy of note. For example, John Howard himself was a former employee, and deputy leader of the Liberal Party, Julie Bishop was a former partner.

Political donations from Clayton UTZ are also documented. For example:

The Liberal Party in WA owed only \$3800. Among the WA donors to the Liberals in WA was law firm Clayton Utz which donated \$7250 in the lead-up to former managing partner Julie Bishop's successful bid to win the seat of Curtin.

In effect, the AFP were now directing significant amounts of public money to Clayton UTZ to seek to protect themselves, and the (Liberal) Howard Government from potential embarrassment and worse. The same organization, Clayton UTZ, donated funds to Liberal politicians.

The use of Clayton UTZ in itself, which is well beyond the means of Schapelle Corby, to seek to find a legal device to avoid disclosing information, is perhaps illustrative of the nature of the information itself. See other elements of *The Expendable Project* for further details of this.

By this point, the principles of the *Freedom of Information Act* had long since been lost.

Clayton UTZ's fifty-five page submission to the AAT was countered by a detailed response, by Schapelle Corby's representative, with the following introduction:

I am not a lawyer. Schapelle Corby cannot afford a lawyer, and certainly not a high powered team such as the one the AFP has called upon, at tax payers' expense, to seek to prevent her from viewing the information they hold about her.

All my colleagues and I can do on her behalf is to apply the principles and purpose of the act itself, and most importantly, measure right from wrong using common sense. I would also contend that given the unique nature and characteristics of this freedom of information request, the value of *case law* is in any event significantly diminished or often irrelevant.

I would submit that the Clayton UTZ response, assembled at such expense, has not invalidated any of the points made in the last submission (*SLC1*). The stark and fundamental questions remain, and they tend to be questions of the utmost gravity.

For context, I would like to refer to some recent developments, in which information has emerged which further demonstrates the public interest need for transparency with respect to the AFP.

I refer to the prosecution of Allan Kessing, for which the AFP, allegedly on a political mission, withheld critical evidence from the defence and from the court. This is currently playing out in the media and in Parliament. In the circumstances, perhaps it isn't surprising that the AFP are less than forthcoming, as demonstrated in this Senate Estimates transcript by Commissioner Negus:

[www.aph.gov.au/hansard/senate/commtee/s62.pdf]

This is additionally relevant, however, because the AFP withheld the *Kessing Reports* themselves from Schapelle Corby's lawyers and from the Bali court. Given the nature of Schapelle Corby's defence, and that the reports substantiated the alarming degree of criminality at Sydney Airport, this was clearly critical evidence.

Equally disturbing, Commissioner Keelty stated the following, two weeks before the verdict: "*There is very little intelligence to suggest that baggage handlers are using innocent people to traffic heroin or other drugs between states*". Yet, the AFP had held the *Kessing Reports*, which showed the opposite, for some months.

I cite this as a single example from many, because it is topical and it illustrates the gravity of the disturbing and public interest issues at stake.

In addition, given these types of conflicts of interest, how can it be reasonable for the AFP to define public interest with respect to the release of information embracing their own conduct?

How can it be reasonable for the AFP to be allowed to withhold critical evidence from a person struggling for life, on the basis of subjective judgements made by themselves, when release of such information may incriminate themselves?

Evidence of misconduct is already in the public domain. Yet the AFP are intent on denying access to information which may incriminate a number of very senior officers, and politicians. Through opposing this freedom of information request so vigorously, the AFP has also demonstrated the lengths they are prepared to go to sustain this position. We contend that this in itself serves no credit to the AFP.

To us, the public interest is very clear indeed, and in this case, is uniquely serious in terms of its implications.

Public interest surely isn't to allow the myriad of information, potentially relating to such hugely disturbing matters, to remain hidden from the victim.

I would submit that this is neither in the interests of the public, nor in the long term interest of the AFP. I submit that whilst exemption may be in the personal interests of the individuals in situ, past and present, it is not in the interests of the AFP as an organization.

This is the context of this case. We very much hope that the tribunal will understand the principles, issues, and utmost importance of the case, which we further seek to articulate below.

Please allow Schapelle Corby to have access to all the information she humbly requests.

Please allow more of the truth to emerge, in the public interest, in the interests of natural justice, and in support of the principles enshrined in the *Freedom of Information Act*.

There follows our response to the Clayton UTZ submissions for each freedom of information request, and our original review submission.

Thank you for your attention,

Yours Faithfully,

The tribunal hearing itself is scheduled for the final quarter of 2011.

STRATEGY & APPROACH ADOPTED

Extreme and unjustified censorship.

Refusal to engage in dialogue.

The use of a level of legal expertise well beyond the means of Schapelle Corby, thus creating an unbalanced process, as well as indicating a clear disregard for the principles of the *Freedom of Information Act* itself.

Critical and important material, which was known to exist, was withheld and not acknowledged.

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10. SUMMARY & CONCLUSIONS

A more pressing need for access to information, held by government, would be difficult to envisage.

Equally, in a situation where the departments themselves were central to the most disturbing and serious of incidents, and allegations of corruption, a clearer *public interest* need for transparency and openness would be hard to imagine.

Yet, the sections within this report demonstrate beyond doubt, not only the complete failure of the *Freedom of Information Act*, but its abuse on a systemic scale, both in terms of letter and spirit.

A variety of means were employed to frustrate Schapelle Corby's efforts to obtain information on herself, including the following:

- Self exemption from the entirety of the *Freedom of Information Act* (ABC)
- Critical and important material, which was known to exist, was withheld and not acknowledged (Customs, ACMA, AFP)
- Barriers and hurdles were created for the FOI submission itself, including disputing legal documentation witnessed by a government department (Customs, DPP, DFAT)
- Extended and lengthy delays were common between responses (most departments)
- Impossible requirements were created and demanded (e.g.: the identification of 7,500 internal documents) (DPP, ACMA)
- Discussions and debate were refused, with the contents of correspondence simply ignored (DPP, AFP)
- Requests were flatly rejected on the basis that they created too much work (DPP, DFAT, PMD, ACMA)
- Efforts at mediation and compromise were rejected outright (DFAT)
- Extreme censorship was exercised preventing the release of anything meaningful (Dept of Infrastructure & Transport, AFP)

Consistently, departments sought to create a position in which they were granted the right to make subjective decisions regarding scope and inclusion, usually on the basis of resourcing.

[Summary & Conclusions]

There is no doubt, however, that they fully understood the implications of this in terms of its propensity for abuse. Indeed, the importance of full scope to the integrity of the exercise, was explained on a number of occasions.

A chronological examination reveals that once the '*too much work*' card was first deployed, its use spread quickly across the departments, indicating a degree of orchestration. That communication occurred between departments is not in doubt, since contact with each other to confirm communication releases, is on record.

CONCLUSION

The outcome of this catalogue of refusals, rejections, censorship and abuse, is that Schapelle Corby was denied the right to information held on herself under the *Freedom of Information Act*.

Through a wide variety of devices and methods, the government, or many of its major departments at least, prevented her from accessing data relating to her own grave circumstances, as well as information relating to the government's own activities with respect to her predicament.

In practical terms, Schapelle Corby's democratic and legal rights, under freedom of information legislation in Australia, have been revoked.

Footnote Regarding the Freedom of Information Act

With respect to the act itself, whether the abuses documented are an accidental bi-product of badly framed legislation, or whether the legislation was deliberately constructed in such a way that it allows organs of state to cover up and hide damaging information, is an important question. However, it is outside the scope of this report.



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