

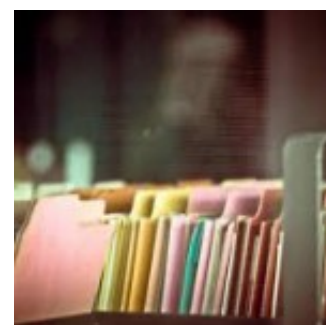


## Freedom of Information Cases

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(<http://www.aloyiabrooks.com/wp-content/uploads/2014/02/images.jpg>)

Aloysia has been seeking to obtain further information relating to the Australian government's knowledge, involvement or acquiescence in the unlawful treatment of detainees and other covert military activity in the War on Terror.



There are several cases currently pending both in Australia and in the United States.

### Australian Cases

In 2012, Aloysia started the process of applying for documents under the Australian *Freedom of Information Act 1982* (FOI Act) to several government departments, including the Office of the Prime Minister and Cabinet (PMC), the Attorney-General's department (AGs), and the Department of Foreign Affairs and Trade (DFAT).

The FOI cases involve the following;

- 1. Prime Minister and Cabinet (PM&C):** There are two cases currently before the Information Commissioner regarding the CIA Extraordinary Rendition program, the detention of Australian citizens at Guantanamo Bay, any offers of repatriation,

involvement in David Hicks plea deal and the Howard government's understanding of torture and ill-treatment. Records of specific conversations between Australian government officials and United States representatives have been sought, including the conversation between former Prime Minister Howard and US Vice President Dick Cheney in February 2007 (<http://www.truth-out.org/news/item/2320:former-guantanamo-chief-prosecutor-david-hicks-war-crimes-charge-was-a-favor-for-australia>).

More than two years after the original request was submitted, and lengthy consultations in order to narrow the requests, not one document has been handed over by the PM&C. The process has been repeatedly stalled, and the office has failed to respond within the specified statutory periods on a number of occasions. The initial request was denied on the basis that they would have to consult with the US government and that this would be an unreasonable diversion of resources.

In June 2015, the Commissioner handed down a decision requiring the Prime Ministers Office to release documents to me within 30 days of the decision. You can read the full decision here in "FX" and the Department of Prime Minister and Cabinet 2015 [AICmr 39] 5 June 2015 (<http://www5.austlii.edu.au/cgi-bin/sign.cgi/au/cases/cth/AICmr/2015/39>).

The Commissioner is due to rule on the FOI case involving the CIA rendition requests shortly.

**2. Department of Foreign Affairs and Trade (DFAT):** There is one case presently before the Information Commissioner in relation to Guantanamo and David Hicks. The requests have sought details about conditions of confinement in Guantanamo, any allegations of mistreatment and medical treatment, offers of repatriation, the extent of understanding as to the lack of fair trial protections afforded to Guantanamo prisoners under the 2006 Military Commissions Act, and the extent of political interference in the specific case of David Hicks. The first tranche of documents was heavily redacted and some documents that are known to exist were missing. One of the documents contained notes in relation to a conversation between Alexander Downer and a lawyer for David Hicks that demonstrated the Australian government was pushing for a plea deal (<https://newmatilda.com/2013/02/20/getting-away-torture>). There was also evidence of inconsistencies (<http://thejusticecampaign.org/?p=1861>) between what the government was saying publicly about David's treatment in Guantanamo, and what was said in cables.

Instead of an internal review of the documents, a fresh request was made, and it still failed to provide the missing documents and the documents that were obtained showed extensive redactions. The case was appealed to the Information Commissioner in April 2014. The result is pending.

**3. Attorney General's Department (AGD):** After a lengthy consultation process, the first request sought any images, documents or other records pertaining to conditions of confinement in Guantanamo, offers of repatriation and the military commissions plea deal, only 11 pages of heavily redacted material was obtained. Some documents were exempt in full.

The initial 11 pages indicate that the Australian government was aware that David Hicks would not receive a fair trial (<http://thejusticecampaign.org/?p=1861>) through the military commissions process. The documents refer to the possibility of evidence obtained through the use of torture would be admissible. They also contained 'talking points' that shifted attention off the lack of fair trial protections.

This case is now pending before the Information Commissioner.

**4. Department of Defence (DOD):** This case is pending before the Information Commissioner. The documents sought from the DOD relate to the existence of the covert SAS 4 Squadron and US Joint Special Operations Command (JSOC) interaction. The request specifically sought information as to whether JSOC have been providing training to Australian forces or intelligence in interrogation techniques at Swan Island, in Melbourne. The initial request was denied on the basis that acknowledgement of the documents would cause as much damage to national security as actually releasing them. The appeal is now before the Information Commissioner on the basis that the interaction between JSOC and 4 Squadron is already in the public arena, as well as the fact that there is public statements indicating Australian SAS forces train and interact with JSOC.

Documents relating to the original request were released in October 2014.

In addition to the other requests, there is a strong public interest in obtaining information in relation to these matters.

### **The main issues with the Australian FOI process have been:**

- the extensive consultation process (narrowing requests in order to remove the risk of practical refusals)
- the way in which information is held in Australian government departments

(some departments apparently do not have electronic files, so need to sort through material manually)

- the Australian government's right to consult individuals involved who no longer hold office, and;
- the considerable involvement of the United States government in redacting the material provided to Australian citizens (this is common in relation to information that could potentially harm 'international relations').

## US Cases

### **Brooks v DoD, DoJ, DoS, FBI & CIA**

Because of the limited success Aloysia has had in the Australian system, in late 2012, Aloysia submitted similar FOI requests in the US in order to try and obtain the information through the US FOIA system. Requests were lodged with the State Department, the Department of Justice, the FBI, the CIA and the Department of Defense.

Because the agencies failed to comply with the FOI requests, on Friday the 21 February 2014, Aloysia's US lawyer, Jeffrey Light filed an FOIA lawsuit. An FOI lawsuit places the burden on the US government to explain to the public why it is withholding the information.

An initial release from the FBI provides a heavily, and almost unreadable file. This will be appealed during the FOI lawsuit.

### **Why Freedom of Information?**

The FOI Act provides a "legally enforceable right of access to government documents" (<http://www.oaic.gov.au/freedom-of-information/about-freedom-of-information>). The importance of the FOI system has been highlighted by the Office of the Australian Information Commissioner (<http://www.oaic.gov.au/freedom-of-information/about-freedom-of-information>) (OAIC):

1. FOI allows individuals to see what information government holds about them, and to seek correction of that information if they consider it wrong or misleading.
2. FOI enhances the transparency of policy making, administrative decision making and government service delivery.
3. **A community that is better informed can participate more effectively in**

## **the nation's democratic processes.**


This is particularly important in relation to information pertaining to alleged human rights abuses, and given the ongoing culture of secrecy surrounding torture and ill-treatment in the War on Terror.

However, the FOIA process in both countries has been fraught with difficulties, despite the principles of democracy being hinged on transparency in government.

Updates in relation to the cases will be posted as they happen.

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