



THE HON BRENDAN O'CONNOR MP  
Minister for Home Affairs

My ref: MC10/1287, MC10/1412  
Your ref: J/10/00348, 521007/2

COPY

The Honourable Cameron Dick MP  
Attorney-General and Minister for Industrial Relations  
Queensland Government  
Level 18 State Law Building  
50 Ann Street  
BRISBANE QLD 4001

Dear Attorney-General

Cameron,

Thank you for your letter of 22 January 2010 enclosing correspondence you have received from the Attorney-General for the State of Alabama in the matter of David Gabriel Watson. I understand the Attorney-General has requested your assistance in providing evidence relating to the investigation and prosecution of Mr Watson in Queensland so that Alabama authorities can consider prosecuting Mr Watson for the death of his wife.

The correspondence you have received from the Alabama Attorney-General does not constitute a mutual assistance request as it has not been made by the United States Department of Justice to the Commonwealth Attorney-General's Department in accordance with the *Treaty between the Government of Australia and the Government of the United States of America on Mutual Assistance in Criminal Matters*. Nor, based on my understanding of the evidence collected by the Queensland Police Service, is a formal mutual assistance request required in this case. Apart from my consideration of the provision of material obtained in response to Australian mutual assistance requests to New Zealand and the United States, the Alabama Attorney-General's request for evidence remains a matter to be considered by the Queensland Government.

However, in your consideration of this matter you may wish to adopt a similar approach to that which would be taken under the *Mutual Assistance in Criminal Matters Act 1987* (in a mutual assistance case) and the *Australian Federal Police Practical Guide on International Police-to-Police Assistance in Potential Death Penalty Situations* (in a police-to-police case), particularly given Australia's long standing opposition to the death penalty.

If a mutual assistance request was to be received by the Commonwealth Attorney-General's Department in a death penalty matter, in making a decision to provide evidence I would need to consider whether a person is likely to be charged with or convicted of a death penalty offence. Where a person has been charged with such an offence, I must refuse the mutual assistance request unless I am of the opinion that, having regard to the special circumstances of the case, assistance should be granted. Special circumstances can include where the foreign country seeking assistance has provided a written undertaking that the death penalty will not be imposed, or if imposed, will not be carried out.

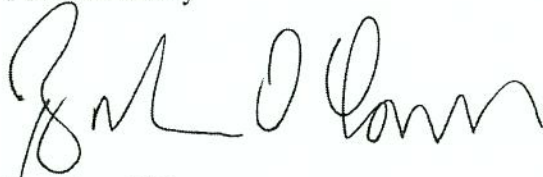
If a person has not been charged but the provision of assistance may result in the death penalty being imposed, I may refuse the request if, after taking into consideration the interests of international criminal cooperation, I am of the opinion that in the circumstances of the case the assistance should not be granted. Circumstances that may be relevant include the nature of the offence under investigation, the importance of the evidence in proving the offence, whether a suspect has been identified or has confessed to the offence and the likelihood of the death penalty being imposed.

If the AFP was to receive a request in a death penalty matter, then the *AFP Practical Guide on International Police-to-Police Assistance in Potential Death Penalty Situations*, a copy of which is enclosed, would need to be taken into account. Relevant factors to be considered include the purpose for which assistance is sought and the degree of risk to the person involved in providing the assistance, including the likelihood that the death penalty will be imposed. Where a person has been arrested, detained, charged or convicted of a death penalty offence, then only the Commonwealth Attorney-General or I may approve the provision of assistance.

In addition to addressing issues in relation to the death penalty, I have a general discretion under the Mutual Assistance in Criminal Matters Act to refuse a mutual assistance request, and under this provision may take into account a matter such as whether the subject of the request is likely to be prosecuted for conduct for which he or she has already been tried in Australia.

I hope this information is of assistance. I understand that officers of the Commonwealth Attorney-General's Department will continue to cooperate with Queensland authorities and remain available to discuss this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brendan O'Connor', written in a cursive style.

**Brendan O'Connor**

04 FEB 2010



## **AFP Practical Guide on international police-to-police assistance in potential death penalty situations.**

### 1. Security classification of instrument

This document is classified: **UNCLASSIFIED**. This document is intended for internal AFP use. Wider dissemination should be approved by the document owner and/or authorised by Commonwealth law.

### 2. Acronyms

**AFP** Australian Federal Police

**AOCC** AFP Operations Coordination Centre

### 3. Definitions

**Mutual assistance request** – has the meaning as stated in the *Mutual Assistance in Criminal Matters Act 1987* (Cth).

### 4. Authority to create the Practical Guide

This guideline was issued by the National Manager Border and International using power under s. 37(1) of the *Australian Federal Police Act 1979* (Cth) as delegated by the Commissioner under s. 69C of the Act and in consultation with the Attorney-General's Department.

### 5. Introduction

This Practical Guide is intended to provide members with information relating to the basis for conducting enquiries:

- from foreign law enforcement agencies to the AFP
- to foreign law enforcement agencies from the AFP

where offences may attract the death penalty.

### 6. Authority to provide information to foreign law enforcement agencies

The AFP is authorised to provide information to foreign law enforcement agencies in accordance with the *Australian Federal Police Act 1979* (Cth) and *Ministerial Direction*. Additionally, a number of United Nations Conventions, to which Australia is a signatory, further support the processes of conducting international police cooperation.

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This guide applies only to the provision of information which can be provided on a police-to-police basis. This guide does not apply to the provision of assistance that requires a mutual assistance request. In such cases, ss. 8(1A) and 8(1B) of the *Mutual Assistance in Criminal Matters Act 1987* (Cth) apply. That Act is administered by the Attorney-General's Department.

## 7. Policy for cooperation with foreign law enforcement agencies

The policy for AFP cooperation with foreign law enforcement agencies on a police-to-police basis is stated in this section.

Where no person has been arrested or detained on suspicion of having committed an offence in respect of which the death penalty may be imposed in a foreign country:

- Police-to-police assistance can be provided without reference to the Attorney-General or Minister for Home Affairs.
- Requests for assistance with potential death implications will be subject to an approval process.
- Requests for assistance to and from the AFP International Network must be forwarded to the relevant AFP International Desk via an overseas liaison communication, highlighting the issue.
- Requests for assistance through Interpol via the AFP Operations Coordination Centre will also be subject to the approval process.

## 8. Approval process

On receipt of a request the relevant International Desk/AFP Operations Coordination Centre (AOCC) will determine whether a matter has potential death penalty implications and implement the AFP approval process for the exchange of information.

Where necessary the AFP member or requesting agency will be asked to complete and submit the 'Assistance in Potential Death Penalty Situations – Approval to Release Information' form and forward it to the relevant International Desk/AOCC.

The International Desk/AOCC will seek a decision from a member of the International Executive who will take into consideration the factors detailed below as to whether the matter will proceed. This process will be required for all new matters and for significant developments in existing matters.

In deciding whether or not to approve the exchange of information in death penalty matters, Manager International Network or the National Manager Border and International must consider:

- the purpose of providing the information



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- the likelihood of the authorities in the foreign country using the information only for that purpose
- the reliability of the information
- whether the information is exculpatory in nature
- nationalities of the person involved
- the person's age and personal circumstances.
- the seriousness of the suspected criminal activity
- the potential risks to the person, and other persons, in **not** providing the information
- the degree of risk to the person in providing the information, including the likelihood the death penalty will be imposed, and
- Australia's interest in promoting and securing cooperation from overseas agencies in combating crime.

Information provided by the AFP to foreign law enforcement agencies must be in accordance with the *Australian Federal Police Act 1979* (Cth) and any other legislation, treaty, convention, Ministerial Direction, agreement, memorandum of understanding, policy, guideline and practical guide or associated document relevant to the provision of information to foreign law enforcement agencies.

### **Procedures after arrest, detention, charge or conviction**

After arrest, or detention, or charge, or conviction of an offence for which the death penalty may be imposed in a foreign country:

- only the Attorney-General or the Minister for Home Affairs may approve the exchange of information on a police-to-police basis
- all requests for the exchange of information are to be notified to the Manager International Network as soon as possible after receipt
- no action is to be taken, nor should any indication be given as to the decision likely to be taken in respect of the request
- following consultation with the Attorney-General's Department, the National Manager Border and International will provide the Commissioner and the Deputy Commissioner (Operations) with such advice as considered necessary to seek advice from the Attorney-General or the Minister for Home Affairs
- the AFP will seek advice from the Attorney-General or the Minister for Home Affairs on a case-by-case basis to ensure ongoing AFP actions correlate with Australian Government policy and other international obligations.

## 9. Reporting

The Commissioner of the AFP is required to report to the Minister for Home Affairs biannually on the nature and number of cases where information is provided to foreign law enforcement agencies in death penalty cases.

## 10. Further advice

Any queries relevant to the content of this Practical Guide may be referred to the Manager International Network.

## 11. References

- *Australian Federal Police Act 1979* (Cth)
- *Mutual Assistance in Criminal Matters Act 1987* (Cth)
- Ministerial Direction.