largely unnoticed since that time.

The national interest in ensuring the highest level of protection for classified information continues to be an important consideration in the operation of the FOI Act. The key reason for the inclusion of an explicit provision for the protection of classified information in the FOI Act is to ensure that the information is not used inappropriately.

As you are aware, section 7 of the FOI Act exempts AGIC agents from the publication of any of the tasks or functions or activities of any AGIC agent.

Others, including costs on government.

(9) the desirability of minimising the regulatory and administrative burdens, including costs on government.

and

application of the new public interest test...

or in whole, by the FOI Act.

(10) the appropriateness of the range of agencies covered, either in part or in whole, by the FOI Act.

Intelligence Community (AGIC) are

involved in the review of matters to make a joint submission to this review. In particular, the Australian Intelligence Community with the

Thank you for providing the Australian Intelligence Community with the

AIC Submissions to the Review of the Freedom of Information Act 1982 (FOI Act) and the Australian Information Commissioners Act 2010

Dear Dr. Hawke,

BARTON ACT 2600
3-5 National Circuit
Attorney-General's Department
Freedom of Information Review
Dr. Allan Hawke AC

1 February 2013
Therefore required to protect AIC agencies – and Australian national interests.

A more robust form of protection than that provided by sections 33, 37 & 45 is

protected may properly be unknown to a decision maker in another agency.

protection may be unknown to a decision maker in another agency. It is certainly possible that the reasons why such information needs to be

sources. It is certainly possible that the reasons why such information needs to be

are classified and covered activities of intelligence agencies and their

the most classified and covered activities of intelligence agencies and their

However, due to the need to

the need to

the expression. Such documents may need protection, especially when they

were difficult to take. If it will not be immediately clear to a non-expert reviewer whether

additionally, decision on whether the exemptions in these sections apply may be

Paragraph 4.6 below.

is likewise, is discussed further in

These are, however, unrelated to a means of case-by-case protection

also apply to exemption under section 33 of the FOI Act.

We note that, in the event of the removal of the blanket exemption, AIC agencies

of AIC records

a. Removal of the section 3 exemption would weaken the protection

of AIC agencies and should be retained. There are a number

records relating to national security, defence and international relations to be

.records relating to national security, defence and international relations to be

reasons for this:

It is our view that the FOI Act achieves an appropriate balance between openness

accountability, while at the same time providing adequate protection of information

with comprehensive powers of scrutiny over the AIC agencies to ensure public

knowledge of intelligence agencies was adequate and remained adequate agencies

In our view, there is a need to provide appropriate protection to

The section 37 exemption provides protection of certain specific intelligence

the Inspector General of Intelligence and Security (IGIS) and the relevant

the Parliamentary Committee of the Inspector General of Intelligence and Security (ARIC) has been provided

The 1996 report Open Government: A Review of the Federal Freedom of

UNCLASSIFIED

UNCLASSIFIED
Australis, national interest, level of access to important intelligence on which we rely. For coverage of interests to be, after the situation to us and the understandings we can make. It could diminish the effectiveness of intelligence activities, this could also have a bearing on the legal implications of removing the section. If any of our intelligence partners consider the removal of the section to be a matter of confidence. We need to maintain our confidence.

The confidence of our allies in our ability to protect information that they share with us is a matter of high-level importance. Any change to the existing arrangements could have severe implications for our relationship with key intelligence partners.

Removal of the section may impact negatively on our security.

There would be an increased risk, as a result. The risk of exposure from any amendment but safe response in many cases would be in our interest, not only the disclosure of the document. Where the presence of information of intelligence interest, the only authority to be sought. This is an example of the risk.

The practical reality of these considerations is that the vast majority of Australian methodologies and capabilities, underpinning current and future intelligence-enriching techniques and collection.

Secrecy, sources and methods are fundamental to intelligence; however, access to that information is a fundamental aspect of the ability to maintain our national security.

The continuing threat of espionage is of particular concern in our FOI context.
If you have any questions, or would like any additional information, please contact Mr. Robert McKernon on 02 6266 0900.

Yours sincerely,

[Signature]

If it is decided that a closer look at the examination of AIC agencies is to be made,

Section 36a(a)(2) of the 3 United States Code

examination of AIC agencies from complying with the POI regime or a
protection of Intelligence agencies from section 36a(a)(2) of the 3 United States Code is
representation of information under the Freedom of Information Act 1996 (C.54).

section 36a(a)(2) of the 3 United States Code.

Similarly, while the US POI legislation extends in principle to cover Intelligence

For example, the UK examines neither the Security Service, the Secret Intelligence

execution Intelligence Agency material.

protection of the records of Intelligence agencies that have the practical effect of

However, the POI legislation in the US and UK is different in both substance and

Recent commentary arguing for the removal of the section 7 examination has