



OFFICIAL

Freedom of Information (FOI) request

Notice of Decision

Reference: FOI/2023/119

Mr Alex Pentland

By email: foi+request-10093-33788a4d@righttoknow.org.au

Dear Mr Pentland

I refer to your request of 23 March 2023 to the Attorney-General's Department (AGD) for access to documents under the *Freedom of Information Act 1982* (the FOI Act). On 17 April 2023, the Department of the Prime Minister and Cabinet (the Department) accepted a partial transfer of your request under section 16(1)(b) of the FOI Act

The purpose of this letter is to provide you with a decision on the part of your request for access that was transferred to the Department under the FOI Act.

Scope of request

The scope of the request which was transferred to the Department and subject to this decision includes:

(d) briefing notes, legal advice and file notes held by the Prime Minister and/or his office in relation to the proposed wording for the Voice referendum.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Material taken into account

In reaching my decision I referred to the following:

- the terms of the transferred request
- the FOI Act
- the Guidelines issued by the Information Commissioner under section 93A of the FOI Act (the Guidelines)

Documents in scope of request

The Department has identified six (6) documents that fall within the scope of your request.

Decision

I have decided to refuse access on grounds the documents contain information exempt under section 34 (Cabinet documents).

Reason for decision

My findings of fact and reasons for deciding documents are exempt is set out below.

1. Section 34 – Cabinet documents

Section 34 of the FOI Act provides:

(1) A document is an exempt document if:

(a) both of the following are satisfied:

(i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;

(ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or

...

(c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; ...

The purpose of the Cabinet exemption is to protect the confidentiality of Cabinet processes.

In making my assessment, I have consulted with the Department's Cabinet Division on the documents. Based on the material before me I am satisfied that:

- the documents contain material that was brought into existence for the dominant purpose of briefing a Minister on a submission to Cabinet (paragraph 34(1)(c)).

Accordingly, I have decided to refuse your request for access on the basis that the documents are exempt from release under section 34 of the FOI Act.

Review rights

If you disagree with my decision, you may apply for internal review or Information Commissioner review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days after the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days from the date it is received.

Applications for review should be sent to foi@pmc.gov.au.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days after the date of this letter.

More information about Information Commissioner review is available [here](#).¹

FOI Complaints

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. More information about complaints is available [here](#).²

If you wish to discuss any aspect of your requests, you can contact the FOI Section by email at foi@pmc.gov.au.

Yours sincerely



Saskia Bourne
Assistant Secretary A/g
First Nations Policy Branch
Department of the Prime Minister and Cabinet
9 June 2023

¹ <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

² <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>