



Australian Government

Department of Climate Change, Energy,  
the Environment and Water

Ref: LEX-73934

Watson Norwood

Via email: [foi+request-10241-f1a79871@righttoknow.org.au](mailto:foi+request-10241-f1a79871@righttoknow.org.au)

Dear Watson Norwood

### Decision on your Freedom of Information request

I refer to your request, received by the Department of Climate Change, Energy, the Environment and Water (**department**) on 6 May 2023 for access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to the following documents:

'I am writing to make a request under the Freedom of Information Act for a complete copy of the departments' Freedom of Information (FOI) logs for the period 2013-2023, including any secondary departments controlled by the agency.

I request that this is provided as a document and not a simple redirect to the agency website as I am of the view that your online disclosure logs do not actively reflect your FOI requests that you have received in this period.

I would appreciate it if you could provide me with this information in an electronic format, such as a PDF or spreadsheet, if possible.

If there are any fees associated with fulfilling this request, please let me know in advance so that I can consider my options.'

### My decision

I have decided to refuse your request for access to documents under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents you have requested and I am satisfied that they cannot be located or do not exist.

The information you have requested does not exist in a discrete form. The department is not obliged under section 17 of the FOI Act to produce a written document containing the information you have requested as the department cannot produce the document using a computer or other equipment ordinarily available to it for retrieving or collating stored information.

Please see **Attachment A** for the reasons for my decision.

### Disclosure log requirements

According to your request, it is your view that the department's online disclosure logs do not reflect the FOI requests that the department has received for the period 2013 – 2023. There are two reasons why this may be the case.

First, the FOI disclosure log is not a record of all FOI requests received by the department. The disclosure log only contains information required to be published under section 11C of the FOI Act. Agencies are not required to publish information about every request received by an agency.

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Under section 11C, the department must publish information that has been released in response to FOI requests, subject to exceptions. Exceptions to publication on the disclosure log include:

- Where it would be unreasonable to publish the personal information of an individual.
- Where it would be unreasonable to publish the business, commercial financial or professional affairs of any person.
- Where it would be unreasonable to publish other information of a kind determined by the information commissioner.

The disclosure log does not include information regarding requests where documents have not been released under FOI, or information in or about documents that have been released but publication would be unreasonable for a reason outlined above.

Second, during the period of 2013 to 2023, the Commonwealth Government has had multiple Machinery of Government changes. Machinery of Government changes involve the movement of functions, resources, and people from one department to another, and sometimes the creation of a new department altogether.

The department was created on 1 July 2022, and its disclosure log only includes information from after that date.

Information about how to access disclosure log material from before that date which pertain to government functions which transferred to the department on 1 July 2022 can be found on the department's disclosure log.

### **You can ask for a review of my decision**

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to [foi@dcceew.gov.au](mailto:foi@dcceew.gov.au).

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website [www.oaic.gov.au](http://www.oaic.gov.au) or phone the OAIC on 1300 363 992.

### **Further assistance**

Please contact our FOI contact officer at [foi@dcceew.gov.au](mailto:foi@dcceew.gov.au) if you have any questions.

We would be more than happy to assist you.

Yours sincerely



Melanie McIntyre  
A/g General Counsel  
Legal Division  
Corporate, Climate Change and Energy Branch

2 June 2023

**Attachment A**  
**REASONS FOR DECISION**

**What you have requested**

'I am writing to make a request under the Freedom of Information Act for a complete copy of the departments' Freedom of Information (FOI) logs for the period 2013-2023, including any secondary departments controlled by the agency.

I request that this is provided as a document and not a simple redirect to the agency website as I am of the view that your online disclosure logs do not actively reflect your FOI requests that you have received in this period.

I would appreciate it if you could provide me with this information in an electronic format, such as a PDF or spreadsheet, if possible.

If there are any fees associated with fulfilling this request, please let me know in advance so that I can consider my options.'

I understand the reference to 'Freedom of Information (FOI) logs' in your request to be for a document that fulfills the requirements of section 11C of the FOI Act.

Under section 11C of the FOI Act, the department is required to publish all documents released under FOI, subject to exceptions.

**What I took into account**

In reaching my decision, I took into account:

- your request dated 6 May 2023;
- information about:
  - the nature of the documents; and
  - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**);
- the FOI Act.

**Reasons for my decision**

I am authorised to make decisions under section 23(1) of the FOI Act.

Section 24A of the FOI Act

Section 24A of the FOI Act provides that:

- (1) An agency or Minister may refuse a request for access to a document if:
  - (a) all reasonable steps have been taken to find the document; and

(b) the agency or Minister is satisfied that the document:

- (i) is in the agency's or Minister's possession but cannot be found; or
- (ii) does not exist.

The Information Law team conducted searches of the department's FOI case management system, shared drive and email inbox. No documents were identified matching the description in your request.

Discussions with officers in the Information Law team further confirmed that the department does not hold FOI logs for the period 2013-2023.

While information about individual FOI requests is held in the department's case management system, an FOI log containing documents released under FOI is not kept by the department separate to the online disclosure log.

On the basis of these searches, I am satisfied, in accordance with section 24A of the FOI Act, that all reasonable steps have been taken to find the documents and the documents do not exist.

#### Section 17 of the FOI Act

Section 17 of the FOI Act provides that:

(1) Where:

- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
- (c) the agency could produce a written document containing the information in discrete form by:
  - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
  - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

Paragraph 3.204 of the Guidelines provides that the obligation to produce a written document arises if:

- the agency could produce a written document containing the information by using a computer or other equipment that is ordinarily available to the agency for retrieving or collecting stored information; and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations.

These two conditions are distinct and to be applied sequentially.

*Computer or other equipment that is ordinarily available to the agency*

As set out above, section 17(1)(c)(i) of the FOI Act provides that an agency is obliged to produce a written document if the agency could produce the written document by use of a computer or other equipment that is ordinarily available to the agency for retrieving or collecting stored information.

Paragraph 3.207 of the Guidelines provides that a 'computer or other equipment that is ordinarily available' means:

...a functioning computer system including software, that can produce the requested document without the aid of additional components which are not themselves ordinarily available...[T]he computer or other equipment...must be capable of functioning independently to collate or retrieve stored information and to produce the requested document.

The department's case management system for FOI requests is not capable of generating a report that includes information required to be published under section 11C of the FOI Act.

This would require the system to identify and compile all the documents released by the department under FOI into a single document. This is not what the department's case management system is designed to do, and the department does not have a computer system or software with this functionality.

I am satisfied that the department cannot produce a written document containing the information you have requested by using a computer or other equipment that is ordinarily available to it for retrieving or collecting stored information.

*Substantially and unreasonably divert the resources of the agency from its other operations*

As set out above, section 17(2) provides that an agency is not required to produce a written document containing the information if it would substantially and unreasonably divert the resources of the agency from its other operations.

This condition is to be considered only in circumstances where the conditions in section 17(1) are met. As the conditions in section 17(1) are not met, I do not consider it necessary to consider whether producing a document would substantially and unreasonably divert the resources of the department in this case.