

9 August 2023

CR

By email only: CR foi+request-10371-44c0fe50@righttoknow.org.au

Re: Freedom of Information Request No. 2023-00870

Dear CR,

The purpose of this letter is to notify a decision about access to documents you requested under the Freedom of Information Act 1982 (Cth) (“**FOI Act**”).

I am an officer authorised under section 23(1) to make decisions in relation to FOI requests.

Your FOI request was received by Australia Post on 7 June 2023. You are seeking the following documents:

- *Any relevant material with statistics relating to ‘missorts’ for domestic and international mail for any period since 2020 to today; and*
- *Any relevant material relating to the environmental or financial impact of missorted mail.*

Searches for the documents matching the description of your request were conducted by relevant Australia Post team members, from various areas of Australia Post, specifically Development & Support Services, Network Innovation & Assets, Community, Sustainability & Stakeholder Engagement and Finance. The attached Schedule of Documents lists the documents found (“**the Documents**”) and the access decision in relation to each document. Further information, including my reasons for my decision, is set out below.

Decision and reasons for decision

With regard to the Document 1, I have decided to grant access in part, with redacted information refused under section 7(2) of the FOI Act – commercial activities.

Regarding Document 2, I have decided to release it in full.

Address:
Freedom of Information
111 Bourke St, Melbourne VIC 3000
GPO Box 1777 Melbourne VIC 3001

Contact:
E foi@auspost.com.au



Australia Post acknowledges the Traditional Custodians of the land on which we operate, live and gather as a team. We recognise their continuing connection to land, water and community. We pay respect to Elders past, present and emerging.

In addition, no documents were found matching the second element of your request ‘*relevant material relating to the environmental or financial impact of missorted mail*’ therefore, this part of your request is formally refused under section 24A – documents not found or do not exist.

Material taken into account

The following material was taken into account in making my decision:

- the Documents;
- searches for documents matching the description of your request;
- the FOI Act (particularly sections 7 and 24A); and
- the FOI Guidelines issued by the Australian Information Commissioner (“**the Guidelines**”).

Commercial Activities (section 7(2))

The redacted material in **Document 1** contains ‘missort’ data relating to Australia Post’s parcel, express post, registered post, international express and other trackable services, which in my view are exempt from disclosure, as these products/services form part of the commercial activities (discussed further below) of Australia Post.

Section 7(2) in conjunction with Schedule 2 Part II of the FOI Act entirely exempts Australia Post from the operation of the FOI Act in respect of documents relating to its commercial activities.

The Guidelines confirm this at paragraph 2.14, Part 2 which state:

*Exemptions applying to commercial activities, security and defence intelligence documents, and other matters Section 7(2) (supplemented by Schedule 2, Part II) lists agencies that are exempt from the operation of the FOI Act in relation to particular types of documents. The list includes amongst others; the Attorney-General’s Department in relation to documents in respect of activities undertaken by the Australian Government Solicitor and various bodies such as **Australia Post**, Comcare, Commonwealth Scientific and Industrial Research Organisation (CSIRO), NBN Co and Medicare, in relation to documents in respect of commercial activities.*

Section 7(3) of the FOI Act defines ‘commercial activities’ in Part II of Schedule 2 as being:

- *activities carried on by an agency on a commercial basis in competition with persons other than governments or authorities of governments; or*

- *activities carried on by an agency, that may reasonably be expected in the foreseeable future to be carried on by the agency on a commercial basis in competition with persons other than governments or authorities of governments.*

Section 7(4) of the FOI Act then provides, in Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to ‘*documents received or brought into existence in the course of, for the purposes of, the carrying on of those activities*’.

For this exemption to apply, the activity discussed in the documents must be carried out in competition with persons other than governments and government authorities.

Australia Post competes against private enterprise in all the services it offers, with the exception of regular letters. It constantly faces competition from major and boutique delivery entities, owner drivers and other couriers such as TOLL, FedEx, TNT, DHL Express to name a few.

Also, Australia Post is expected to act commercially and expected to deliver a commercial rate of return. I believe that the redacted information has been brought into existence in the course of and for the purposes of carrying on commercial profit seeking activities, as described in section 7(3) of the FOI Act.

Further, my belief is that the redacted material in Document 1 relates to commercial activities as defined in the FOI Act, because the redacted material in Document 1 is:

- not a part, or component of the letter service which is “reserved” to Australia Post by section 29 of the Australian Postal Corporation Act (1989) (“APC Act”); and
- is operated separately to the letter service.

In summary, it is my firm view that:

- the redacted material in Document 1 has been brought into existence in the course of and for the purposes of carrying on commercial profit-seeking activities; and
- the redacted material comprising commercial activities in Document 1 is carried on in a fully competitive basis in competition with persons other than governments or authorities of governments.

It follows that I believe that the disclosure of the redacted material in Document 1 is not required.

Documents that do not exist or cannot be found (section 24A)

No 'missort' data was found for regular letters (separate to domestic letters – with tracking), whether the letters originated within or outside Australia, as regular letters are not generally tracked.

Further, as already noted, no documents were found relating to the second element of your FOI request, discussing environmental or financial impact of missorted mail.

Section 24A of the FOI Act states:

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 possession but cannot be found; or*
 - ii. does not exist.*

The FOI Guidelines explain this further at paragraph 3.85, Part 3:

An agency or minister may refuse a request if it has taken 'all reasonable steps' to find the document requested and is satisfied that the document cannot be found or does not exist. There are two elements that must be established before an agency or minister can refuse a request for access to a document under s 24A:

- the agency or minister must have taken all reasonable steps to find the document, and*
- the agency or minister is satisfied that the document cannot be found or does not exist.*

No documents were found where Australia Post discusses the environmental and financial impact of 'missorts'. Therefore, this aspect of your request has been refused.

Your review rights

If you are dissatisfied 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 Australia Post for an internal review of our decision. The internal review application must be made within 30 days of 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 the FOI Review Officer within 30 days.

Please send your review request in writing by mail or email to:

FOI Review Officer or foi@auspost.com.au
Australia Post
GPO Box 1777
Melbourne VIC 3001

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review our decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_1_0
email: foidr@oaic.gov.au
post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

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. We may be able to rectify the problem. 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. Complaints can be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1
email: foidr@oaic.gov.au
post: GPO Box 5218 Sydney 2001

More information about complaints is available on the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

If you are not sure whether to lodge an Information Commissioner review or an Information Commissioner complaint, the Office of the Australian Information Commissioner has more information at: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Yours sincerely,



Anna Oliver
Freedom of Information Officer

SCHEDULE OF DOCUMENTS – FREEDOM OF INFORMATION REQUEST No. 2023-00870

Document no.	Description	Formal Decision on Access	Exemption
1	Missort data (parcel products, express post, domestic letter with tracking, registered post, international express and other trackable services)	Granted in Part	Redacted information refused under section 7(2) of the FOI Act – Exemption of certain bodies.
2	Monitor data (Letters – Regular and Priority)	Granted in full	