

Notice of Decision under The Freedom of Information Act 1982 (the FOI Act)

Applicant: Philip Baigent <foi+request-10600-8da50610@righttoknow.org.au>

Decision Maker: Laura Funke

Date of Decision: 19 September 2023

Organisation: Australian Nuclear Science and Technology Organisation

1. This is my decision and the reasons for my decision in relation to the request made by the Applicant to the Australian Nuclear Science and Technology Organisation (**ANSTO**) on 22 August 2023 seeking access to the following documents under the FOI Act:
 - *records that explain the circumstances in which a staff member's sexual preferences or practices are collected and held at that time.*
 - *records that specifically document how, at that time, information regarding a staff members sexual preferences or practices was collected and the protocols in place that where instituted to further limit the access to this highly sensitive information.*
 - *records that provide any protocols as to the further distribution and/or steps taken to limit distribution of information relating to sexual preferences and practices.*
 - *records that document why information of staff sexual preferences and practices was previously collected and held but is not now.*
 - *records that specify the procedures in place if information relating to sexual practices involved illegal activities.*
2. I am authorised under section 23 of the FOI Act to make decisions in relation to Freedom of Information requests.

DECISION

3. I have decided under section 24A of the FOI Act to refuse your request for access to documents on the basis that no documents exist.

REASONS FOR MY DECISION

4. In making my decision, I had regard to:
 - (a) Your FOI request dated 22 August 2023
 - (b) The relevant provisions of the FOI Act, in particular, section 24A
 - (c) Enquiries undertaken with Security, People Performance and Capability, ANSTO Legal, the Occupational Health Centre and SAP Solutions Team.
 - (d) the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act.

5. Section 24A of the FOI Act relevantly provides:

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (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.

6. To locate documents, I sent requests to the following relevant staff to undertake searches and confirm whether they held any documents relevant to the request.

- (a) Occupational Health and Wellbeing Leader at ANSTO's onsite Occupational Health Centre
- (b) Performance Advisor in the Talent Acquisition Team within People Performance and Capability
- (c) General Manager, People Performance and Capability
- (d) SAP Solutions Human Resources Specialist responsible for Human Resources Systems
- (e) Business Systems Manager - Information Management Senior Manager Nuclear Security
- (f) Senior Lawyer, ANSTO legal

7. Based on the above searches and my enquiries I am satisfied that:

- (a) All reasonable steps have been undertaken to locate the documents you requested; and
- (b) ANSTO does not have any documents falling within the scope of your request because ANSTO does not have a practice of collecting information *relating to sexual preferences and practices*.

8. I understand from enquiries with Legal that the privacy policy was reviewed and updated during 2016/2017 and the reference to sexual preferences and practices was removed because ANSTO has never had a practice of collecting this type of information.

9. Based on the above, I am refusing your request for access to documents under s 24A of the FOI Act.

10. Attachment A sets out your review rights.

Laura Funke

Projects and Privacy Officer
Freedom of Information Delegate

Attachment A

Internal review

If you are dissatisfied with this decision, you have certain rights of review available to you. Firstly, under section 54 of the Act, you may apply for an internal review of the decision. It is not necessary to go through ANSTO's internal review process and you may apply for a review by the Information Commissioner (see below). However, the Information Commissioner is of the view that it is usually better to seek an internal review first.

Your application for an internal review must be made within 30 days, or such further period as ANSTO allows, of you receiving this notice.

No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned.

An application for a review of the decision should be addressed to the FOI Coordinator

Email: foi@ansto.gov.au or

Post: Locked Bag 2001 Kirrawee DC NSW 2232

Information Commissioner

You may also apply to the Information Commissioner for a review of the decision, or the subsequent internal review decision made by ANSTO. Your application must be made within 60 days, or such further period as the Information Commissioner allows, of you receiving the notice of an initial decision or a decision made on internal review.

No particular form is required to apply for review although it must give details on how notices may be sent to you (e.g. postal or email address) and include a copy of the notice of the decision given by ANSTO. The application should also contain particulars of the basis on which you dispute the decision.

You can lodge your application with the Office of the Australian Information Commissioner in a number of ways:

Preferred method is online:	www.oaic.gov.au online portal
Post:	GPO Box 5288 Sydney NSW 2001
Fax:	+61 2 6123 5145
Email:	enquiries@oaic.gov.au

Administrative Appeals Tribunal

You may subsequently apply to the Administrative Appeals Tribunal (AAT) for review of a decision made by the Information Commissioner with which you are dissatisfied. An application to the AAT

must be made within 28 days after the day on which you receive the Information Commissioner's decision.

The AAT is a completely independent review body with the power to make a fresh decision. Your application to the AAT should be accompanied by an application fee, which may be refunded in some instances. The fee may be waived by the AAT where financial hardship is shown.

The AAT has a help desk to advise on its procedures. More information is available on the AAT's website www.aat.gov.au.

The AAT preferred method of lodgement is via its online services portal.

The contact details of the AAT are:

Phone: 1800 228 833

Email: generalreviews@aat.gov.au

Locations: <https://www.aat.gov.au/contact-us/our-locations>

Commonwealth Ombudsman

You may also complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Ombudsman will make a completely independent investigation of your complaint.

The Commonwealth Ombudsman generally will not investigate your complaint unless you have raised it with the agency directly. This gives the agency an opportunity to resolve the complaint first.

Complaints can be made in writing:

Post: GPO Box 442, Canberra ACT 2601

Phone: 1300 362 072

In person: see <https://www.ombudsman.gov.au/contact>

Online: see <https://www.ombudsman.gov.au/what-we-do/Can-we-help-you>