



Our reference: FOIREQ23/00170
Attention: Thomas
By email: foi+request-10628-56659067@righttoknow.org.au

Freedom of Information Request – FOIREQ23/00170

Dear Thomas,

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Information Commissioner (OAIC) on 29 August 2023.

I am writing to inform you of my decision.

I have made the decision to refuse your request on the basis that all reasonable steps have been taken by the OAIC to find the documents in scope of your FOI request, and I am satisfied that the documents do not exist.

In accordance with section 26(1)(a) of the FOI Act, the reasons for my decision and findings on the material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

Under the FOI Act, I seek copies of all documents recording exchanges between the OAIC and the Attorney General or his office over the period from 7:30am on 21 August to 6:00pm on 29 August (inclusive) which relate to the Senate Legal and Constitutional Affairs References Committee inquiry into the operation of the FOI system.

I am particularly interested in text messages (such as messages sent via the Signal messenger app, SMS or WhatsApp) but would also like to see any records of meetings or email exchanges.

Request timeframe

Your request was made on 29 August 2023.

This means that a decision on your request is due to be decided by 28 September 2023.

Decision and reasons for decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

I have made the decision to refuse your request on the basis that documents do not exist.

Material taken into account

In making my decision, I have had regard to the following:

- your FOI request dated 29 August 2023;
- the FOI Act, in particular sections 3, 11, 11A, 15, 24A and 26 of the FOI Act;
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- consultation with line areas of the OAIC in relation to your request

Documents cannot be found, do not exist or have not been received – Section 24A of the FOI Act

Section 24A(1) of the FOI Act provides that an agency may refuse a request for access to documents requested under the FOI Act if all reasonable steps have been taken to find the document and the agency is satisfied that the document cannot be found or does not exist.

I have made the decision to refuse your request under section 24A of the FOI Act on the basis that all reasonable steps have been taken to find the documents you have requested, and no documents exist.

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request.

Searches Undertaken

In response to your request, the OAIC conducted reasonable searches for documents relevant to your request with:

- Executive level staff members potentially involved in preparation for FOI inquiry and who may have contact with the Attorney-General's Office.

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's case management system - Resolve
- the OAIC's document holding system - Content Manager
- OAIC's email system

The following search terms were used when undertaking electronic records searches:

- AG;
- Attorney-General;
- Dreyfus;
- AGO;
- Senate Legal and Constitutional Affairs References Committee inquiry; and
- @ag.gov.au

The OAIC staff members potentially involved in preparation for FOI inquiry and who may have contact with the Attorney-General's Office confirmed that no documents were located.

Having consulted with the relevant line areas and having undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request and that no relevant documents exist.

Conclusion

Based on the terms of your request and searches undertaken, I am satisfied that all reasonable steps have been taken to find documents that fall within the scope of your request and am satisfied that no documents exist.

I have made the decision to refuse your request for access to documents under section 24A(1)(b)(ii) of the FOI Act, on the basis that no documents exist.

Please see the following page for information about your review rights in relation to this FOI request and information about the OAIC's disclosure log.

Yours sincerely,

Emily Elliott
Senior Lawyer
28 September 2023

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

If you would like access to the information that we hold about you, please contact foi@oaic.gov.au. More information is available on the Access our information page on our website.