



Australian Government
Attorney-General's Department

Our ref: FOI23/469; CM23/34240
OAIC ref: MR23/01213

5 April 2024

Brutus

By email: foi+request-10652-3b4ad8d1@righttoknow.org.au

Dear applicant

Freedom of Information Request FOI23/469-IC - Decision letter

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Department (the department).

Your request

On 3 September 2023, you requested access to:

“Despite an express object of the Public Interest Disclosure Act 2013 (Cth) requiring that “disclosures by public officials are properly investigated and dealt with” (Public Interest Disclosure Act 2013 (Cth), s 6(d)), under the Freedom of Information Act 1982 (Cth), I request access to any and all documents in the possession of the Attorney-General's Department providing that it is permissible for an inadequate public interest disclosure investigation to remain unremedied by officials in the agency to which an internal disclosure under the Public Interest Disclosure Act 2013 (Cth) was allocated for investigation.”

On 20 September 2023, the department emailed you and asked you to further clarify your request. On that same day you responded and advised that you would not amend your request as you considered it was sufficiently clear.

On 6 October 2023, the department wrote to you to advise you that a practical refusal reason exists under s 24AA of the FOI Act. In that notice the department advised your request did not meet the requirements of a valid request, as it did not provide such information as is reasonably necessary to enable the department to identify the document/s requested.

On 20 October 2023, you replied to the department and indicated that you did not wish to revise the scope of your FOI request. In that correspondence you corrected the department's initial administrative error regarding the date your request was received (subsequently corrected to 3 September 2023). You also noted that due to the incorrect date of receipt recorded by the department, your request was not made by the due date and became a deemed refusal of the department. You advised you had lodged a request for Information Commissioner (IC) Review of the refusal.

On 27 October 2023 the department provided you with the substantive decision which would have been made had time not run out. In this decision the department practically refused your request pursuant to s24(1)(b). Section 15(2) of the FOI Act sets out the requirements of a valid request. Those requirements include that the request must provide such information as is reasonably necessary to enable a responsible

officer of the agency or the Minister to identify the documents requested: s 15(2)(b). The decision maker was unable to identify the document/s for your request. Section 24AA(2)(b) provides that a practical refusal reason exists if the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents). Section 24 provides that a request may be refused if, once a practical refusal reason has been identified, a request consultation pursuant to s 24AB is undertaken.

As described above, the department commenced a request consultation process with you after the due date of your request to seek further information about the documents you were seeking and with a view to enabling the department to process your request. This department sought further details from you as the department has policy responsibility for the *Public Interest Disclosure Act 2013* (the PID Act) and the *National Anti-Corruption Commission Act 2022* (the NACC Act).

The Transparency and Administrative Law Branch, which has policy responsibility for the Public Interest Disclosure Act, made the original decision.

On 9 January 2024, the department received notice of your IC Review from the OAIC (reference MR23/01213). The OAIC also advised it had preliminary inquiries under s 54V of the FOI Act.

On 10 January 2024, the department responded to the OAIC's s 54V Preliminary Inquiry request and confirmed your decision became a deemed refusal on 4 October 2023.

On 9 February 2024, the department received a Notice of IC Review and request for documents. In that notice, the OAIC attached your response to their request for clarification of the scope of your request. On 2 February 2024, the OAIC proposed your request to be for:

any policy documents stating AGD investigations into internal disclosures under the PID Act can be completed to an inadequate standard.

You replied and confirmed this to be the scope of your request.

On receipt of this scope clarification, the department reassessed the original reasons provided to you on 27 October 2023. The department identified this scope clarification was for documents in relation to the department's internal operations, and PID policy and procedure documents, and not in relation to Whole of Australian Government policy administration of the PID Act. Your scope clarification removed the practical refusal reason identified pursuant to s 24AA(2)(b).

The department now provides you with a decision which would have been the decision the department would have made in the event that time had not run out. The department is unable to make a substantive decision pursuant to s 55G of the FOI Act as this decision does not provide access to documents.

My decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

In making my decision, I have taken the following into account:

- the terms of your request,
- advice provided to me by officers with responsibility for matters to which your request relates,
- the provisions of the FOI Act, and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the Guidelines).

Section 24A of the FOI Act relevantly provides that an agency or Minister may refuse a request for access to a document if all reasonable steps have been taken to find the document, and the agency is satisfied that the document:

- is in the agency's possession but cannot be found, or
- does not exist.

When considering a decision to refuse access under s 24A of the FOI Act, the Guidelines relevantly provide at paragraph 3.89 that an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents,
- the current and past file management systems and the practice of destruction or removal of documents,
- the record management systems in place,
- the individuals within an agency or minister's office who may be able to assist with the location of documents, and
- the age of the documents.

To identify the documents for your request, I arranged for staff likely to be able to identify documents to undertake comprehensive searches of relevant departmental information holdings. In particular, a departmental staff member with responsibility for managing the department's internal PID policy and processes interrogated the department's records management system, using search terms which were developed with reference to the information provided in the scope of your request. Despite these efforts, no relevant documents were identified. This record of search is included in my decision at **Attachment A**.

Having regard to the above, I am satisfied that reasonable steps to locate the document(s) to which you have sought access were undertaken. I am also satisfied that the documents do not exist within the department's records holdings. I have therefore decided to refuse access pursuant to s 24A of the FOI Act.

If you wish to discuss this decision, the FOI case officer for this matter can be reached on (02) 6141 6666 or by email to foi@ag.gov.au and by quoting FOI23/469-IC.

An OAIC officer will likely contact you in due course to discuss this revised decision and next steps for IC Review MR23/01213.

Yours sincerely



Jessica Hockings
Director
Freedom of Information and Privacy
Strategy & Governance Branch

Attachments

Attachment A: Record of search