



OFFICIAL

Freedom of Information (FOI) request

Notice of Decision

Reference: FOI-2023-242

To Brutus
By email: Foi+request-10654-3b5d99dc@righttoknow.org.au

Dear Brutus

I refer to your request to the Department of the Prime Minister and Cabinet (the Department), under the *Freedom of Information Act 1982* (the FOI Act), received on 3 September 2023.

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

Scope of request

You set out your original request in the following terms:

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 Department of Prime Minister and Cabinet 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 14 September 2023, the Department provided you with the link to the Department's procedures for investigating public interest disclosures (the PID Procedures),¹ which appeared to be relevant to your request. The Department also sought additional information to assist the Department in identifying the documents you are seeking. On the same day, you advised that your request is

¹ PM&C Public Interest Disclosure Procedures, 5 August 2021:
https://www.pmc.gov.au/sites/default/files/resource/download/2021-08-05-signed-updated-public-interest-disclosure-procedures-2021_0.pdf

sufficient in its original form, and requested that the Department proceed with the processing of your request.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Material taken into account

In reaching my decision I have had regard to the following:

- the terms of your request;
- searches and enquiries undertaken by the Department;
- the FOI Act;
- the Guidelines issued by the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

Decision

I have decided to refuse your request under section 24A(1)(b)(ii) of the FOI Act, on the grounds that the Department has taken all reasonable steps to locate the documents you have requested, and those documents do not exist.

Reason for decision

My findings of fact and reasons for deciding to refuse your request for access are set out below.

1. Documents cannot be found or do not exist

Section 24A(1) of the FOI Act provides that:

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.

In determining what the FOI Act means with respect to 'all reasonable steps', I have had regard to the FOI Guidelines which discuss the meaning of 'reasonable' in section 24A(1)(a). It is not designed to go

beyond the limit assigned by reason, not to be extravagant or excessive, rather to be moderate and of such an effort to be appropriate or suitable to the circumstances.²

The Department has undertaken enquiries with People Branch regarding any relevant records that would meet the terms of your request. People Branch sits within the Corporate Division of the Department and is responsible for the Department's policy on, and handling of, public interest disclosures. People Branch advised that based on their knowledge of the subject matter that there were no documents in the possession of the Department that would meet the terms of your request, apart from the already publicly-available PID Procedures which was provided to you on 14 September 2023.

I am satisfied that the measures taken by the Department to identify and locate documents in response to your request under the FOI Act, as outlined above, are appropriate and suitable given the circumstances. After taking all reasonable steps to find the documents, no documents relevant to your request have been identified.

Accordingly, I am refusing your request for access under section 24A(1)(b)(ii) of the FOI Act as the documents you have requested do not exist.

Additional Information

It is open to you to lodge a fresh request in relation to the Department's procedures for investigating public interest disclosures. It would assist the Department in processing your request if you could provide clarification on what you would consider to be an *inadequate* or *unremedied* public interest disclosure investigation, in light of the PID Procedures that has already been provided to you.

This would enable the Department to undertake a search for documents and would assist in ensuring that your request is valid under the FOI Act, noting the requirements of section 15(2) of the FOI Act. If you need assistance before making a further FOI request, you are welcome to contact the FOI section on (02) 6271 5849 or foi@pmc.gov.au.

Review rights

If you disagree with my decision, you may apply for internal review or Information Commissioner review of the decision.

² Paragraph 3.88 of the FOI Guidelines

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days after the date of this letter, please attach the reasons why you disagree with the decision.

Applications for review should be sent to foi@pmc.gov.au.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days after the date of this letter.

More information about Information Commissioner review is available [here](#).³

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. More information about complaints is available [here](#).⁴

If you wish to discuss any aspect of your requests, you can contact the FOI Section by email at foi@pmc.gov.au.

Yours sincerely



Melinda Bopping
Chief People Officer
People Branch
Department of the Prime Minister and Cabinet

3 October 2023

³ <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

⁴ <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>