



## Office of the Attorney-General

AGOFOI23/476; 23/32371

A Q-S

Request reference:

[https://www.righttoknow.org.au/request/documents\\_relating\\_to\\_the\\_appoin\\_3](https://www.righttoknow.org.au/request/documents_relating_to_the_appoin_3)

Dear Applicant

### Freedom of Information Request AGOFOI23/476 – 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.

#### Your request

On 6 September 2023, you requested access to:

*copies of any documents or correspondence held currently held in your office which include any of the following three excerpts, or material which is substantially similar to any of the following three excerpts, and which were created or received prior to 14 March 2022.*

#### *Excerpt one:*

*"...some merit-based criteria are provided in the relevant enabling laws, and that the process for the assessment of candidates is specified in the 'Government's Merit and Transparency Policy' of the Australian Public Service Commission (APSC). The APSC policy includes requirements to advertise vacancies, provide detailed selection criteria, and assess candidates by a panel that includes an APSC representative, whose role is to ensure that the process is in accordance with the policy. On the completion of the assessment process, the panel determines a pool of suitable candidates and provides a report to the APSC Commissioner for endorsement and transmission to the Attorney-General. Subsequently, the Attorney-General seeks the Prime Minister's approval for the appointment of the candidate by the Governor-General as AHRC President or Commissioner."*

#### *Excerpt two:*

*"...the APSC policy provides for circumstances where the Attorney-General may consider that a full selection process is not required. This includes where there is an urgent requirement to fill a position, as was the case for the Disability Discrimination Commissioner in 2019. It is also relevant in relation to the availability of an eminent person 'where there would be little value in conducting a selection process', as was the case for the Human Rights Commissioner in 2021."*

#### *Excerpt three:*

*"The appointment of two Commissioners without additional funding being provided (in particular, funding was removed for the Disability Discrimination Commissioner in*

*2014, and was not restored when appointments to this role were made in 2016 and 2019; funding was not provided when the Human Rights Commissioner was appointed in 2016, and is yet to be confirmed following the appointment of a Human Rights Commissioner in 2021);*

- A sustained increase in complaints of discrimination and human rights violations without dedicated additional funding;*
- A substantial increase in complaints during the COVID-19 pandemic, with no additional funding support; and*
- No general increase in the AHRC overall budget, requiring increased property and staffing costs to be met through the existing appropriation."*

On 4 October 2023, the department acknowledged your request on the above terms on behalf of the Office of the Attorney-General.

A decision in relation to your request is due on 6 October 2023.

### **My decision**

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

Section 11(1)(b) of the FOI Act provides that, subject to that Act, a person has a right to obtain access, in accordance with that Act, to 'an official document of a Minister, other than an exempt document'.

The Attorney-General was sworn in after 14 March 2022. On 14 March 2022, Mr Dreyfus was the Shadow Attorney-General.

Documents created or received by the current Attorney-General when he was Shadow Attorney-General are not 'official documents of a Minister' within the meaning of the FOI Act. Accordingly, I am satisfied that the office does not hold any documents that fall within the scope of your request.

### **Additional information**

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

### **Questions about this decision**

If you wish to discuss this decision, the FOI case officer for this matter is Joanna, who can be reached on (02) 6141 6666 or by email to [foi@ag.gov.au](mailto:foi@ag.gov.au).

Yours sincerely



Houston Ash  
Senior Adviser  
Office of the Attorney-General, the Hon Mark Dreyfus KC MP

6 / 10 / 2023

**Encl.** Attachment A: FOI review rights.

## **Attachment A - FOI review rights**

If you are dissatisfied with my decision, you may apply to the Office of the Australian Information Commissioner for review.

### **Information Commissioner review**

An application for review by the Information Commissioner must be made in writing within 60 days of the date of the decision letter, and be lodged in one of the following ways:

online: [https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

email: [foidr@oaic.gov.au](mailto: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 at <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>.