



Australian Government

Department of Communications

FREEDOM OF INFORMATION REQUEST NO. 26-1415

Jxeeno, Right to Know.org.au

**ACCESS DECISION
STATEMENT OF REASONS**

I, Elizabeth Lawler, Manager FOI, Office of the General Counsel of the Department of Communications (the **Department**):

- (a) being authorised by the Secretary under subsection 23(1) of the *Freedom of Information Act 1982* (the **FOI Act**) to make decisions about access to documents under the FOI Act; and
- (b) required under section 26 of the FOI Act to provide a Statement of Reasons for my decision;

make the following statement setting out my findings on material questions of fact, referring to the evidence or other material upon which those findings were based and give the reasons for my decision.

A. BACKGROUND

1. On 18 May 2015, Jxeeno (the **Applicant**) emailed the Department via the Right to Know website, requesting access to the following documents (the **FOI request**) under section 15 of the FOI Act:

'...emails communicated between the Department and NBN Co Limited regarding the rollout of the NBN at Norwest Business Park in lead up the Minister for Communications' announcement on the 12th May 2015.

A relevant article about the announcement can be found here:

[http://m.dailytelegraph.com.au/newslocal/the-hills/norwest-business-park-in-line-for-nbn/story-fnqr8i1f-1227351244518.](http://m.dailytelegraph.com.au/newslocal/the-hills/norwest-business-park-in-line-for-nbn/story-fnqr8i1f-1227351244518)

B. DECISION

2. Subsection 24A(1) of the FOI Act provides that an agency 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 documents either cannot be found or do not exist.

3. The Department has taken reasonable steps to find documents referred to in the FOI request and I am satisfied that the documents do not exist. As such, I have decided to refuse the Applicant's FOI request pursuant to subsection 24A(1) of the FOI Act.

C. FINDINGS ON MATERIAL QUESTIONS OF FACT

4. Comprehensive searches of the Department's electronic document management, email and parliamentary correspondence systems were undertaken. Searches were undertaken using a broad date range and combination of key word searches including specified correspondents. Those searches did not identify any relevant documents.

D. MATERIAL ON WHICH MY FINDINGS OF FACT ARE BASED

5. I based my findings of fact on the terms of the Applicant's FOI request dated 18 May 2015.

E. REASONS FOR DECISION

6. In considering the reasons for my decision in relation to the Applicant's FOI request, I have had regard to the relevant provisions of the FOI Act (set out below) and the following relevant Guidelines:
 - the Freedom of Information Guidelines made under section 93A of the FOI Act by the Office of the Australian Information Commissioner (the **OAIC FOI Guidelines**); and
 - the Department's *Guidelines for Processing Freedom of Information Requests*.

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

7. Subsection 24A(1) of the FOI Act relevantly provides:

Document lost or non-existent

- (1) *An agency or Minister may refuse a request for access to a document if:*
 - (a) *all reasonable steps having been taken to find the document;*
 - (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.*

8. The FOI Act is silent about what an Agency must do in terms of searching for documents that may be relevant to a request, that is, it does not provide guidance as

to the meaning of 'reasonable steps'. However, paragraph 3.54 of the OAIC FOI Guidelines provides that:

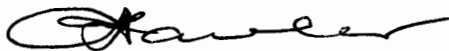
Agencies should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practice in the agency's environment. At a minimum, an agency or minister should take comprehensive steps to locate a document, having regards to:

- *the subject matter of the documents;*
- *the current and past file management systems and the practice of destruction or removal of documents;*
- *the records management systems in place;*
- *the individuals within an agency who may be able to assist with the location of documents; and*
- *the age of the documents.*

9. The Information Commissioner considers that, as a minimum, an agency should conduct a search by using existing technology and infrastructure to conduct an electronic search of documents, as well as making enquiries of those who may be able to help locate the documents.
10. The Department has undertaken comprehensive searches of the electronic records management, email and parliamentary correspondence systems and spoken with staff in the relevant line areas.
11. Therefore, I am satisfied the Department has taken all reasonable steps to find the documents that are the subject of the Applicant's FOI request and that the documents do not exist. Accordingly, I have decided to refuse the Applicant's FOI request under subsection 24A(1) of the FOI Act.

F. REVIEW RIGHTS

12. This decision is subject to review under sections 54 and/or 54L of the FOI Act. The OAIC's *FOI Fact Sheet 12 – Your review rights* is attached.



Elizabeth Lawler
Manager | FOI and Stakeholder Complaints
Office of the General Counsel

16 June 2015