



OFFICIAL

## Freedom of Information (FOI) request

Internal Review decision

Reference: FOI/2023/297IR

To: Moe

By email: [foi+request-10754-0d6a575d@righttoknow.org.au](mailto:foi+request-10754-0d6a575d@righttoknow.org.au)

Dear Moe

I refer to your email dated 22 November 2023, seeking an internal review under the *Freedom of Information Act 1982* (the FOI Act), of the decision made on 20 November 2023 (the primary decision) by a delegate of the Department of the Prime Minister and Cabinet (the Department).

You set out your request for internal review, as follows:

*Are you able to check to see if all documents have been found.*

*I find it hard to believe that the only time the Prime Minister was made aware of this was after the decision had already been made to illuminate Parliament House*

### Authorised decision-maker

Under section 54(2) of the FOI Act, an applicant is entitled to apply for a review of a decision refusing to give access to a document in accordance with a request. Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the original decision) to undertake a review of that decision.

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

### Internal review decision

I have carefully reviewed your submissions in support of your request for internal review and commissioned further searches of the Department's records repositories. These additional searches returned 2 further documents which fall within scope of part one (1) of your request. On this basis I have decided to vary the primary decision to provide access to 2 further documents, with irrelevant material redacted under section 22 of the FOI Act.

I have decided to affirm the remainder of the primary decision, as it relates to parts two (2) and three (3) of your request, to refuse access under section 24A(1) of the FOI Act on grounds the Department has taken all reasonable steps to locate the documents you have requested, and those documents do not exist.

A Schedule of Documents released to you is provided at [Attachment A](#).

## Background

On 14 October 2023, you made a request under the FOI Act in the following terms:

*I am looking for the following document related to the Australian Governments decision to illuminate Parliament House in blue and white. Specifically, the illumination as referred to in the Joint Statement by the Presiding Officers found in this link:*

[https://www.aph.gov.au/News and Events/Joint statements by the Presiding Officers/Joint Statement by the Presiding Officers on the illumination of Australian Parliament House](https://www.aph.gov.au/News_and_Events/Joint_statements_by_the_PresidingOfficers/Joint_Statement_by_the_PresidingOfficers_on_the_illumination_of_Australian_Parliament_House)

*What I am looking for is:* [numbered for reference]

- 1. Any and all documents including, but not limited to, meeting minutes, correspondence, talking points and file notes that relate to the decision to illuminate the Australian Parliament House.*
- 2. Any and all documents that relate to the costs associated with the illumination of the Australian Parliament House in blue and white*
- 3. Any and all documents that including communications or correspondence with a foreign government, foreign or domestic organisations, foreign or domestic individuals either requesting, encouraging or suggesting that the Australian Parliament House be illuminated in blue and white.*

On 22 October 2023, the Department wrote to you to advise the Department of Parliamentary Services (DPS) would be the correct agency to respond to your request. You provided the following response:

*I would have thought the department would be made aware, if not directly involved in the illumination of Parliament House and have associated documents...*

On 24 October 2023, you provided the following information:

*The time frame requested is from the 7 - 9 October 2023 inclusive.*

You have requested an internal review of the primary decision. The primary decision in relation to part 1 of your request granted access in full, to 1 document, with irrelevant material deleted under section 22 of the FOI Act.

In relation to parts 2 and 3 of your request, the primary decision refused access under subsection 24A(1) of the FOI Act on grounds the Department has taken all reasonable steps to locate the documents you have requested, and those documents do not exist.

## Reasons for Internal Review decision

In reaching my decision, I have had regard to:

- the terms of your FOI request of 14 October and revised on 22 and 24 October 2023
- the primary decision of 20 November 2023
- submissions made in your request for internal review
- additional searches undertaken in response to your internal review request
- additional documents identified in those searches
- the FOI Act, and
- the FOI Guidelines.<sup>1</sup>

My findings of fact and reasons for the decision are set out below.

### 1. Section 24A(1) – documents cannot be found or do not exist

As outlined in the primary decision, subsection 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'. The term 'reasonable' is not designed to be constructed so as 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.<sup>2</sup>

When processing your primary decision, the Department conducted multiple searches across several areas for any relevant records that would meet the terms of part 2 and 3 of your request. There were no documents found to be in the possession of the Department.

In processing your internal review I commissioned further searches. These searches did not return any documents in the possession of the Department that met the terms of your request.

I am satisfied that the measures taken by the Department to locate documents in response to your initial request and request for internal review, as outlined above, are appropriate and suitable given the circumstances.

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<sup>1</sup> s 93A of the FOI Act

<sup>2</sup> Paragraph 3.88 of the FOI Guidelines

Accordingly, I affirm the primary decision in relation to refusing part 2 and 3 of your request for access, as documents do not exist.

## 2. Section 22 – Deletion of irrelevant material

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would be reasonably regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

It is the Department's policy to exclude the personal and direct contact details of officers not in the Senior Executive Service (SES) and any Ministerial staff, as well as any person's signature, and the mobile or direct numbers of SES officers, which are contained in documents that fall within the terms of an FOI request. This category of information is identified as irrelevant and documents can be modified by the Department to delete the irrelevant material.

Accordingly I am satisfied that part of Documents 1 – 3 are irrelevant under section 22(1)(a)(ii) of the FOI Act. The remainder of the documents have been released to you as they are relevant to part 1 of your request.

## 3. Other information

Having regard to the terms of your request for internal review, the Department notes that Section 6 of the *Parliamentary Precincts Act 1988* provides that the Parliamentary Precincts (which includes Australian Parliament House) are under the control and management of the Presiding Officers. It further provides that the Presiding Officers, subject to any order of either House, take any action they consider necessary for the control and management of the precincts.

Further, the *House of Representatives Practice (7<sup>th</sup> Edition)* provides the following<sup>3</sup>:

For many purposes the Speaker is in effect 'Minister' for the Department of the House of Representatives and jointly with the President of the Senate is 'Minister' for the Department of Parliamentary Services and the Parliamentary Budget Office.

The powers and functions of a Presiding Officer under the *Parliamentary Service Act 1999* parallel those of a Minister in relation to an executive government department under the *Public Service Act 1999*.

As such, I wish to reiterate the advice that DPS is the most relevant agency to address your request.

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<sup>3</sup> Chapter 6, page 183 of the *House of Representatives Practice (7th edition)*. Available at [House of Representatives Practice – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/About-Us/Pages/Parliamentary-Practice).

## Review rights

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

## 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. If you are not satisfied with our response, you can make a complaint to the OAIC. A complaint to the OAIC must be made in writing.

More information about complaints is available on the OAIC website [here](#).<sup>4</sup>

If you wish to discuss any aspect of your request, you can contact the FOI Section by email at [foi@pmc.gov.au](mailto:foi@pmc.gov.au).

Yours sincerely



Andrew Walter  
First Assistant Secretary  
Government Division  
Department of the Prime Minister and Cabinet

22 December 2023

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