



Australian Government

Australian Public Service Commission

Cynthia T

By Email: foi+request-10772-2062ee1b@righttoknow.org.au

Our Reference: LEX 686

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made **19 October 2023** for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to the following:

“Under the Freedom of Information Act 1982 (Cth), I request any reports on the operations of the Australian Public Service Commission given during the 2022-2023 financial year by the Commonwealth Ombudsman.”

Decision on your FOI request

4. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
5. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents meeting the description of what you have asked for can be found or exist.
6. As such, I refuse your request for access to documents pursuant to section 24A of the FOI Act.

Reasons for decision

Section 24A – documents that cannot be found or do not exist

7. Subsection 24A(1) of the FOI Act provides:
 - (1) 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 or Minister’s possession but cannot be found; or
 - (ii) does not exist.
8. The Office of the Australian Information Commissioner (OAIC) has issued guidelines pursuant to section 93A of the FOI Act. At paragraphs 3.88 to 3.93 of these guidelines, the OAIC provides guidance as to the meaning of the term ‘all reasonable steps’ in subsection 24A(1).
9. Under paragraph 3.88 of the guidelines, ‘all reasonable steps’ is taken to mean ‘not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose’.
10. Under paragraph 3.89 of the guidelines, at a minimum an agency takes ‘all reasonable steps’ having regard to the:
 - subject matter of the documents
 - current and past file management systems and the practice of destruction or removal of documents
 - record management systems in place
 - individuals within an agency or minister’s office who may be able to assist with the location of documents, and the age of documents
11. To satisfy myself that ‘all reasonable steps’ would be taken I required the relevant area of the Commission to conduct a search of all records for ‘*reports on the operations of the Australian Public Service Commission given during the 2022-2023 financial year by the Commonwealth Ombudsman*’, and no relevant documents were found.
12. Further, I requested an email search through the Commission’s information technology services provider, for all emails between the Commonwealth Ombudsman and the any Commission email addresses from 1 July 2022 and 30 June 2023 with the search parameters “Reports AND Operations”, and no relevant documents were found.
13. After all reasonable searches, no documents were identified as falling within the scope of your request.

14. In coming to this conclusion, I am satisfied that for the purposes of paragraphs 3.88 and 3.89 of the guidelines, all reasonable searches were conducted.

Contacts

15. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3813 or by email at foi@apsc.gov.au.

Review rights

16. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Melanie McIntyre', with a long horizontal line extending to the right.

Melanie McIntyre
FOI decision maker
19 November 2023

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission;
and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au

Post: The FOI Officer

Australian Public Service Commission

B Block, Treasury Building

GPO Box 3176

Parkes Place West

PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing.

The Ombudsman's contact details are:

Phone: 1300 362 072

Website:
www.ombudsman.gov.au