



**Australian Government**  

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**Australian Public Service Commission**

Our reference: LEX 761(686)

Cynthia T

By email: [foi+request-10772-2062ee1b@righttoknow.org.au](mailto:foi+request-10772-2062ee1b@righttoknow.org.au)

Dear Applicant

**Freedom of Information Internal Review Request – LEX 761(686)**

1. I am writing about your request for internal review, dated 16 December 2023, regarding a decision made by the Australian Public Service Commission (**Commission**) under the *Freedom of Information Act 1982* (**FOI Act**).

**Background**

2. On 19 October 2023, you requested the following documents from the Commission under the FOI Act:

*“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.”*

3. On 19 November 2023, the FOI decision maker, Ms Melanie McIntyre made a decision, under section 24A of the FOI Act, to refuse access to documents on grounds that all reasonable steps were taken to find documents within scope of the request; no such documents meeting the description of what you requested could be found or exist.
4. On 16 December 2023, you sought an internal review of Ms McIntyre’s decision regarding your request:

*“Please pass this to the person who conducts Freedom of Information reviews.*

*I am writing to request an internal review of Australian Public Service Commission's handling of my FOI request 'Report on the operations of APSC'.*

*A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.righttoknow.org.au/request/report\\_on\\_the\\_operations\\_of\\_apsc](https://www.righttoknow.org.au/request/report_on_the_operations_of_apsc)”*

**Decision**

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions, and I have reviewed your request in accordance with section 54C of the FOI Act.



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6. My role is to make a new decision on your request, independently and impartially from the original decision maker. I was not involved or consulted in the making of Ms McIntyre's decision. Internal review is a merits review process and I may exercise all the powers available to an original decision maker.
7. After considering your request and your internal review submissions, under subsection 54C(3) of the FOI Act, I **affirm** Ms McIntyre's earlier decision to refuse your request for access to documents.
8. I refuse your request under subsection 24A(1) of the FOI Act. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents falling within scope were found to exist.

**Reasons for decision**

9. All reasonable steps have been taken to find the documents referred to in your request.
10. The steps undertaken for this internal review by the Commission to identify documents referred to in your request included undertaking additional searches of records, as well as confirming the original searches at the Commission.
11. I am satisfied that the documents referred to in your request do not exist.
12. 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's or Minister's possession but cannot be found; or*
      - (ii) *does not exist.*
13. The Office of the Australian Information Commissioner (**OAIC**) has issued guidelines under 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' for the purposes of subsection 24A(1) of the FOI Act. In this case these steps included searches of document management systems and emails.



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**Contacts**

14. If you require clarification on matters in this letter, please contact the Commission's FOI Officer by email at [foi@apsc.gov.au](mailto:foi@apsc.gov.au).

**Review rights**

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

Yours sincerely

Sam Montenegro  
Authorised FOI decision maker  
29 January 2024





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**ATTACHMENT A**

## **Rights of Review**

### **Asking for a full explanation of a Freedom of Information decision**

If you are dissatisfied with this decision, you may seek external 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.

### **Applying for external review by the Australian Information Commissioner**

If you do not agree with 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 (OAIC) from the date you received this letter or any subsequent internal review decision.

#### **You can lodge your application:**

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001  
Email: [enquiries@oaic.gov.au](mailto: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](http://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](http://www.ombudsman.gov.au)