



Australian Government
Attorney-General's Department

Our ref: FOI23/618; CM23/42800

4 December 2023

John
RTK
By email: foi+request-10835-51711ec7@righttoknow.org.au

Dear John

Freedom of Information Request FOI23/618 – 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's Office, and which was subsequently transferred to the Attorney-General's Department (the department) on 23 November 2023 for processing pursuant to s16 of the FOI Act.

Your request

On 2 November 2023, you requested access to:

the confidential chapter of the Robodebt Royal Commission's report

On 7 November 2023, the department acknowledged your request and advised you that, on 4 July 2023, the Commissioner of the Royal Commission into the Robodebt Scheme, Ms Catherine Holmes AC SC, issued a direction pursuant to section 6D(3) of the *Royal Commissions Act 1902* (Cth) that the confidential chapter of her report is not to be published (DNP-0023). You were also advised that the Commissioner created the confidential chapter to avoid prejudicing the conduct of any future civil action or criminal prosecution.

In light of the advice provided, the department invited you to withdraw your request. Failing such withdrawal by 10 November 2023, the department advised that it would process your request on the basis that the document the subject of your request was exempt for the purposes of the FOI Act.

A decision in relation to your request is due on 4 December 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 department.

I have decided to refuse your request for the reasons set out below.

In making my decision regarding access to the relevant document, I have taken the following material into account:

- the terms of your request
- the provisions of the FOI Act (specifically sections 37 and 46)

- Commissioner Holmes' direction issued on 4 July 2023 pursuant to section 6D(3) of the *Royal Commissions Act 1902* (Cth) that the confidential chapter of her report is not to be published, and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Documents disclosure of which would be contempt of Parliament of contempt of court (section 46)

Section 46 of the FOI Act provides that a document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory.

Documents affecting enforcement of law and protection of public safety (section 37)

Section 37(1) of the FOI Act provides, inter alia, that a document is an exempt document if public disclosure of the document would, or could reasonably be expected to, prejudice the conduct of an investigation of a breach, or possible breach of the law.

Direction not to publish (section 6D of the *Royal Commissions Act 1902* (Cth))

Section 6D(3) of the *Royal Commissions Act 1902* (Cth) provides that the Commission may, in accordance with subsection 3A, direct that:

- (a) any evidence given before it; or
- (b) the contents of any document, or a description of any thing:
 - (i) produced before, or delivered to, the Commission; or
 - (ii) produced under a notice under subsection 2(3A); or
 - (iii) given under a notice under subsection 2(3C); or
- (c) any information that might enable a person who has given evidence before the Commission to be identified;

must not be published, or must not be published except in such manner, and to such persons, as the Commission specifies.

As outlined above, Commissioner Holmes made such a direction in relation to the confidential chapter of her report on 4 July 2023.

Section 6D(4) provides that a person who makes any publication in contravention of any direction given under subsection 3 commits an offence punishable, upon summary conviction, by a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 12 months.

I am satisfied that sections 46 and 37 of the FOI Act apply to the document the subject of your request. I am further satisfied that provision of that document would be in breach of the direction made by the Royal Commission into the Robodebt Scheme on 4 July 2023.

Accordingly, I refuse your request for access to documents.

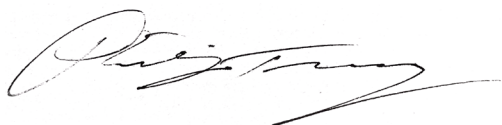
Additional information

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, please contact me by telephone on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Philip Tracey', with a long horizontal flourish extending to the right.

Philip Tracey
Assistant Director
Freedom of Information and Privacy Section
Attorney-General's Department



Australian Government
Attorney-General's Department

Attachment A - FOI Review rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter, and be lodged in one of the following ways:

email: foi@ag.gov.au

post: Freedom of Information and Privacy Section
Strategy and Governance Branch
Attorney-General's Department
3-5 National Circuit BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

Information Commissioner review

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 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

email: 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>