



Matilda Bawden

By email: [foi+request-10849-5f2b93fb@righttoknow.org.au](mailto:foi+request-10849-5f2b93fb@righttoknow.org.au)

Dear Ms Bawden

Office of General Counsel  
GPO Box 367  
CANBERRA CITY ACT 2601

[www.airservicesaustralia.com](http://www.airservicesaustralia.com)

ABN 59 698 720 886

## FOI 23-44 - Decision on Access

I refer to the request made under the *Freedom of Information Act 1982 (Cth)* (**FOI Act**) to Airservices Australia (**Airservices**) on 7 November 2023 and the subsequent internal review on 1 February 2024. (**the request**). It seeks access to:

- 1) *Aircraft ID number of the aircraft/s above the Adelaide CBD on 2/9/23 at 10.32am and 12.02pm.*
- 2) *Name of the person/ company which owns the aircraft.*
- 3) *A description of the purpose for the flight.*

Airservices Australia was deemed to have refused the request under s15AC of the FOI Act when a decision was not made by 7 December 2023

A 'deemed refusal' occurs if the time for making a decision on a request for access to a document has expired and an applicant has not been given a notice of decision. If this occurs, the principal officer of the agency or the minister is taken to have personally made a decision refusing to give access to the document on the last day of the 'initial decision' period (s 15AC).

In internal review, a 'deemed affirmation' of the initial decision occurs when the time for making an internal review decision (30 days) has expired and the applicant has not been given a notice of the internal review decision. If this occurs, the principal officer of the agency is taken to have personally affirmed the original decision (s 54D(2)(a)). Airservices is deemed to have affirmed the original deemed refusal decision on 2 March 2024.

Where an access refusal decision is deemed to have been made before a substantive decision is made, the agency or minister continues to have an obligation to provide a statement of reasons on the FOI request.<sup>1</sup>

Accordingly, my decision and statement of reasons is set out below.

I am authorised under section 23 of the FOI Act and the Airservices Instrument of Delegation and Authorisation to make decisions on primary requests under the FOI Act.

### Decision

I have decided to refuse access to your request on the basis the documents cannot be found or do not exist.

### Statement of Reasons

Section 24A relevantly 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

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<sup>1</sup> *FOI Guidelines* [3.156 – 3.162]

- b) the agency or inister is satisfied that the document:
- c) is in the agency's or Minister's possession but cannot be found; or
- d) does not exist.

Section 24A requires that the Minister or agency take 'all reasonable steps' to find a requested document before refusing access to it on the basis that it cannot be found or does not exist. Whether 'all reasonable steps' have been taken is a question of fact in the individual case to be decided, having regard to matters such as the terms of an applicant's request, the document creation and retention practices in a minister's office.<sup>2</sup>

In response to your request, the appropriate stakeholder business team was consulted in regards to the existence of documents. They advised that there are no documents that meet the terms of your request.

### **Review rights and complaints**

Information about your rights of review and how you can make a complaint about the handling of your request is at **Attachment A**.

### **Contact**

If you wish to discuss my decision please contact me at [foi@airservicesaustralia.com](mailto:foi@airservicesaustralia.com).

Yours sincerely

Ben Ackhurst  
Authorised FOI Decision Maker

25 March 2024

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<sup>2</sup> FOI Guidelines [3.85] — [3.94]

## INFORMATION ON REVIEW RIGHTS

The *Freedom of Information Act 1982* (the **FOI Act**) gives you the right to apply for a review of this decision via:

- (a) an internal review; or
- (b) the Australian Information Commissioner (**Information Commissioner**).

### **Internal review**

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- (a) made in writing;
- (b) made within 30 days of receiving this letter; and
- (c) sent to [foi@airservicesaustralia.com](mailto:foi@airservicesaustralia.com).

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review results in you not being provided access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner.

### **Information Commissioner review**

You can opt to instead seek external review by the Information Commissioner. To seek review you must apply to the Information Commissioner within 60 days of the receipt of this decision letter. Further details on this process can be found on their website at <https://www.oaic.gov.au/>.

You will also have the opportunity to seek Information Commissioner review of an Internal Review if you are dissatisfied with its outcome.

## **Complaints to the Information Commissioner**

### ***Information Commissioner***

You may also 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. Further details on this process can be found on their website at <https://www.oaic.gov.au/>.