



Mr Matthew Landauer  
OpenAustralia Foundation

By email only to: [foi+request-10897-997803d3@righttoknow.org.au](mailto:foi+request-10897-997803d3@righttoknow.org.au)

**Our reference:** 1-10B5ZF94  
**Contact:** [foi@ato.gov.au](mailto:foi@ato.gov.au)  
**Date:** 21 December 2023

## Decision regarding your Freedom of Information request

Dear Mr Landauer,

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982 (FOI Act)*.

### Summary

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

On 22 November 2023 you requested access to documents relating to OpenAustralia Foundation. Specifically, you sought access as follows:

*I request copies of the following:*

*Documents created by, received by, or sent from the ATO relating to:*

*the OpenAustralia Foundation, or*

*openaustralia.org.au, or*

*PlanningAlerts.org.au, or*

*RightToKnow.org.au, or*

*TheyVoteForYou.org.au, or*

*OpenGovernment.org.au, or*

*ElectionLeaflets.org.au*

*where the document was created, received, or sent between 28 May 2022 and 28 November 2022, inclusive.*

*I request that all documents be provided in electronic form.*

*Where multiple versions of such documents exist (such as drafts), I request only 2 versions of the document: the first version or draft and the final version.*

### Decision

I have decided to refuse access to the documents you requested, on the grounds that the documents cannot be found or do not exist.

## **Material taken into account**

I have taken the following material into account in making my decision:

- the terms of your request
- my consultation with relevant business areas within the ATO
- the FOI Act
- the guidelines issued by the Australian Information Commissioner (**OAIC**) under section 93A of the FOI Act

## **Reasons for decision**

My reasons for refusing access are as follows.

### Section 24A of the FOI Act

Section 24A of the FOI Act provides that:

*(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.*

OAIC has issued guidelines pursuant to section 93A of the FOI Act. Agencies must have regard to these guidelines when processing requests under the FOI Act. At paragraphs 3.88 - 3.93 of the guidelines, the OAIC provides guidance as to the meaning of the term 'all reasonable steps' in subsection 24A(1).

### Your request

The scope of your request is broad in that, rather than specifying a particular class or category of documents, or a particular subject matter in relation to which you are seeking documents, the request merely states that you seek documents 'created by, received by, or sent from the ATO relating to OpenAustralia Foundation and several websites which I understand are operated by OpenAustralia Foundation. I acknowledge that your request is confined to a specific time period.

Firstly, you will be aware that the ATO regularly receives 'Right to Know' requests under the FOI Act from e-mail addresses bearing the '@righttoknow.org.au' suffix, and corresponds with FOI applicants via these e-mail addresses. However, as the address 'righttoknow.org.au' contained within your request appears to refer to the website (rather than an e-mail address) I have not taken into consideration the ATO's correspondence with FOI applicants using e-mail addresses bearing the '@righttoknow.org.au' suffix. That is, correspondence with those FOI applicants is beyond the scope of your request.

With this in mind, I have considered your request on the basis that you are seeking access to documents held by the ATO in relation to its (general) dealings with OpenAustralia Foundation regarding the websites listed in your request, and any other work undertaken by OpenAustralia Foundation which the ATO may have some involvement with, including but not limited to, in the context of processing requests under the FOI Act, within the time period specified.

Taking the above into account, I have conducted enquiries with areas within the ATO which might hold any documents referred to in the paragraph above (i.e. if the ATO holds any such documents). My enquiries have been directed to both:

- the ATO's Office of General Counsel which is responsible for information law and requests made under the FOI Act
- various officers within the ATO Corporate business area, which is responsible for functions including corporate affairs, media and communications, external engagement and governance, and internal affairs

If the ATO has had any general dealings with OpenAustralia Foundation or the websites set out in your request across the time period specified, one or more of the officers I have consulted are likely to be aware of such dealings, and to be aware of the location of any documents falling within the scope of your request.

None of these individuals with whom I consulted knew of any dealings that the ATO has had with OpenAustralia Foundation or the websites set out in your request, within the time period specified.

Therefore, the ATO has not located any documents held relating to the scope of your request.

It is worth bearing in mind that the ATO is a very large government agency which engages with a vast number of external stakeholders on a daily basis. It is therefore not practical to undertake a comprehensive search of every single file, record, or e-mail folder which may theoretically contain a document referring to OpenAustralia Foundation, for instance.

Were the scope of your request narrowed to a specific class of documents, for instance, enquiries could be directed to a specific branch within the ATO who may be able to locate those documents. However, given the broad scope of your request, and noting the guidelines issued by OAIC pursuant to section 93A of the FOI Act, I do not consider it appropriate to arrange for further searches, which would be speculative in nature, in the absence of further context of specific information that may enable me to direct those enquiries to locations likely to hold documents you are seeking.

Therefore, I am satisfied that there are no further individuals or business areas within the ATO who may reasonably be expected to hold, or be aware of, the documents sought by you.

In view of the above, I am satisfied that all reasonable steps have been taken to find the documents you have requested and that no such documents can be found or exist.

Access to these documents is, therefore, refused under section 24A of the FOI Act.

### **Final note**

I discussed above the basis on which I considered your request. I note that, in the event that you wished to request information about OpenAustralia Foundation and the websites named in your request, created or obtained by the ATO in its administration of the tax system, that is, regarding the taxation affairs of OpenAustralia Foundation, disclosing any such documents via the Right to Know website would be prohibited.

This is because any such documents are likely to constitute 'protected information' as defined within section 355-30 of Schedule 1 to the *Taxation Administration Act 1953 (TAA)*.

Section 355-25 of Schedule 1 to the TAA states that it is an offence for taxation officers to disclose 'protected information' to an entity who is not the entity to whom the information relates or a 'covered entity' of that entity, as defined in subsection 355-25(2) of Schedule 1 to the TAA.

If a taxation officer were to provide access to documents containing 'protected information' about OpenAustralia Foundation to an e-mail address bearing the '@righttoknow.org.au' suffix, this may contravene section 355-25, as the recipient may not be the OpenAustralia Foundation (or a 'covered entity' thereof). Additionally, as it is known that correspondence with persons using e-mail addresses bearing the '@righttoknow.org.au' suffix is typically published on the Right to Know website, it is likely that disclosure of any such documents would amount to disclosure to the world-at-large (contrary to section 355-25 of Schedule 1 to the TAA).

I note for completeness that section 38 and Schedule 3 to the FOI Act apply to exempt production of a document where disclosure of that document is prohibited under section 355-25 of Schedule 1 to the TAA.

Therefore, in the event that you wish to access information about OpenAustralia Foundation and/or the websites named in your request, created or obtained by the ATO in its administration of the tax system, and you are authorized to receive such information, I invite you to submit a fresh FOI request via e-mail, using an e-mail address that can be identified as belonging to you, rather than via the Right to Know website. No information relating to the taxation affairs of OpenAustralia Foundation can be disclosed in response to a 'Right to Know' request.

### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

### **Internal review**

Under section 54 of the FOI Act, you may apply in writing to the ATO for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, quoting our reference number at the top of this letter, and be lodged in one of the following ways:

email: [FOI@ato.gov.au](mailto:FOI@ato.gov.au)  
post: Australian Taxation Office, Office of General Counsel, GPO Box 4889, Sydney NSW 2001.

Where possible please attach reasons why you believe review of the decision is necessary.

The internal review will be carried out by another officer within 30 days. If you have not been informed of the outcome of the review within that time, you may apply to the Australian Information Commissioner under section 54L of the FOI Act.

### **Australian Information Commissioner review**

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the OAIC must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: [https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)  
email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)  
post: GPO Box 5218, Sydney NSW 2001

Visit the OAIC website, <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>, for more information about Australian Information Commissioner review.

## **Complaints**

Any complaint about the processing of your FOI request can be forwarded to the OAIC. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

online: [https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA\\_1](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1)  
email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)  
post: GPO Box 5218, Sydney NSW 2001

The Information Commissioner can be contacted on 1300 363 992.

Yours sincerely

**A Dieni**

Senior Lawyer  
Office of General Counsel  
Australian Taxation Office