



**Australian Government**  

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**Australian Public Service Commission**

By email: [foi+request-10945-efee0d48@righttoknow.org.au](mailto:foi+request-10945-efee0d48@righttoknow.org.au)

Our reference: LEX 734

Dear Applicant

**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 on **4 December 2023** for access to documents held by the Australian Public Service Commission (the Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from [www.legislation.gov.au](http://www.legislation.gov.au).
3. On 7 December 2023, the Commission wrote to you requesting an extension of 30 days under section 15AA of the FOI Act.
4. On 7 December 2023, you responded to our request and agreed to a conditional extension of time noting the following:
  - “...i) 2 February 2024 - but only on the basis the APSC does not further extend the time within which a decision must be made in reliance on ss27 and/or 27A or otherwise; or alternatively
  - ii) 10 January 2024.”
5. On 19 December 2023, the Commission responded to your email and agreed to making a decision due to you on **10 January 2024** under section 15AA of the FOI Act.

**Documents relevant to your request**

6. You requested access to documents on the following terms:
  - “...a copy of any invoice issued to the APSC by Lawyerbank from 1 October 2021 onwards. I’m willing to exclude, from the scope of my request, the hourly rates mentioned in any relevant document (but not the total dollar amount of any relevant invoice) and the personal information of any person mentioned in a relevant document except for: i) Ms Grady’s personal information, and ii) the personal information of any person who is (or was at the relevant time) a Commonwealth public servant or statutory officer.”
7. All reasonable steps were taken to identify any documents in scope of your request.
8. No documents were found.

**Decision**

9. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.

10. The purpose of this letter is to provide you with a decision on your request under the FOI Act.

### **My decision**

11. All reasonable steps have been taken to find the documents referred to in your request.

12. The steps undertaken by the Commission to identify documents referred to in your request included undertaking searches of procurement records and email records.

13. I am satisfied that the documents referred to in your request do not exist.

14. On this basis, I refuse your request for access to the documents referred to in your request pursuant to section 24A of the FOI Act.

15. In making this decision I have had regard to:

- the terms of your request;
- the FOI Act; and
- the FOI Guidelines issued by the Australian Information Commissioner.

### **Reasons**

16. Subsection 24A(1) of the FOI Act provides:

*'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.'*

17. 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' in subsection 24A(1).

18. 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'.

19. 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.

20. 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

21. 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

22. 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  
Authorised FOI decision maker  
10 January 2024

## 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](mailto: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](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)