



Australian Government
Attorney-General's Department

Our ref: FOI24/171; CM24/6901

24 April 2024

Jillian

By email: foi+request-11276-7133bd59@righttoknow.org.au

Dear Jillian

Freedom of Information Request FOI24/171 – Decision letter

I am writing to give you a decision about your request to the Attorney-General's Department (the department) for access to documents under the *Freedom of Information Act 1982* (the FOI Act). I note that you submitted your request to the Australian Government Solicitor (AGS). AGS forms a group within the department, and therefore the department has processed your request.

Your request

On 27 March 2024 the department received your request for information.

On 2 April 2024, the department acknowledged your request.

On 4 April, the department asked you to revise your request to meet the requirements of the FOI Act. You responded the same day to revise the terms of your request to be for

the instrument pursuant to, and not repugnant to, the Commonwealth of Australia Constitution that provided for the Head of Power that empowered the Parliament of the Australian Government to enact the Digital ID Bill 2023.

The department accepted this scope as valid. A decision in relation to your request is due on 26 April 2024.

My decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

In making my decision, I have taken the following into account:

- the terms of your request,
- the provisions of the FOI Act, and
- the FOI Guidelines issued by the Australian Information Commissioner (the Guidelines).

Section 24A of the FOI Act relevantly provides that an agency or Minister may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document:

- is in the agency's possession but cannot be found, or
- does not exist.

When considering a decision to refuse access under s 24A of the FOI Act, the Guidelines relevantly provide at paragraph 3.89 that an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents,
- the current and past file and record management systems and the practice of destruction or removal of documents,
- the individuals within an agency who may be able to assist with the location of documents, and
- the age of the documents.

To identify the document for your request, I arranged for staff likely to be able to identify documents to undertake comprehensive searches of relevant departmental information holdings. In particular, a departmental staff member with responsibility for processing FOI requests interrogated the department's records management system using search terms which were developed with reference to the information provided in the scope of your request. Despite these efforts, no relevant document was identified.

Having regard to the above, I am satisfied that reasonable steps to locate the document to which you have sought access were undertaken. I am also satisfied that the document does not exist within the department's records holdings. I have therefore decided to refuse access pursuant to s 24A of the FOI Act.

Additional information

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

If you wish to discuss this decision, the FOI case officer for this matter is Rebekah, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Dana Nipperess
Assistant Director

Strategy and Governance Branch

Attachments

Attachment A: Review rights



Attachment A – Your review rights

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

Internal review

You may apply for an internal review of my decision within 30 days of receiving this letter. Your request for internal review must be in writing, and should provide reasons why you believe the review is necessary. You may apply by emailing foi@ag.gov.au or by post to:

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

Another officer will make a new decision on your request within 30 days of receiving your request for internal review. If you are unhappy with the internal review decision, you may ask for an information Commissioner review.

Information Commissioner review

Information Commissioner review requests must be submitted within 60 days of receiving this letter. Your request should include your contact details, a copy of my decision, and the reasons why you disagree with my decision. You can apply in one of the following ways:

Online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Email: foidr@oaic.gov.au

Mail: Director of FOI Dispute Resolution, GPO Box 5288, Sydney NSW 2001.

More information about Information Commissioner review is available at:

<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>.

FOI Complaints

If you are concerned about how we handled your FOI request, please let us know what we could have done better, as we may be able to rectify the situation. If you are not satisfied with our response, you can make a complaint to the Information Commissioner. Your complaint must be in writing, and can be lodged in one of the following ways:

Online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1

Email: foidr@oaic.gov.au

Mail: Director of FOI Dispute Resolution, GPO Box 5288, Sydney NSW 2001.

More information about Freedom of information complaints is available at:

<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints>.