



Australian Government

Department of Communications and the Arts

FREEDOM OF INFORMATION REQUEST NO. 28-1516

Mr Scott McLaughlin

ACCESS DECISION

STATEMENT OF REASONS

I, Christopher Swain, Legal Director, Office of the General Counsel of the Department of Communications and the Arts (the Department):

- a) being authorised by the Secretary under subsection 23(1) of the *Freedom of Information Act 1982* (the FOI Act) to make decisions about access to documents under the FOI Act; and
- b) required under section 26 of the FOI Act to provide a Statement of Reasons for my decision;

make the following statement setting out my findings on material questions of fact, referring to the evidence or other material upon which those findings were based and giving the reasons for my decision.

On 15 January 2016, the Department received a request from Mr Scott McLaughlin (the Applicant) under the FOI Act, requesting access to the following documents:

...copies of all communications made between the Dept of Communications and Sally Cray, whilst she was employed by the Australian Broadcasting Corporation (ABC). Specifically, between Jan 1st 2013 to September 30th 2013.

A. DECISION

I have decided to refuse the Applicant's FOI request for access to documents under subsection 24A(1) of the FOI Act because, upon the Department having taken reasonable steps to find documents, I am satisfied that the documents do not exist within the Department.

B. FINDINGS ON MATERIAL QUESTIONS OF FACT

The Department does not hold any communications made between the Department of Communications and Ms Sally Cray in the specified period (1 January 2013- 30 September 2013).

Comprehensive searches of the Department's document management, parliamentary correspondence and email systems were undertaken. Those searches did not identify any relevant documents. Enquires were made of the Department including the Department's Media Branch and the ABC & SBS Section. Those enquires did not identify any documents relevant to the request.

C. MATERIAL ON WHICH MY FINDINGS OF FACT ARE BASED

I based my findings of fact on the terms of the Applicant's FOI request dated 15 January 2016.

D. REASONS FOR DECISION

In considering the reasons for my decision in relation to the Applicant's FOI request, I have had regard to the relevant provisions of the FOI Act and the following relevant Guidelines:

- the Freedom of Information Guidelines made under section 93A of the FOI Act by the Office of the Australian Information Commissioner (the OAIC FOI Guidelines); and
- the Department's *Guidelines for Processing Freedom of Information Requests*.

Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

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

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps having been taken to find the document;
 - (b) the agency or Minister is satisfied that the document:
 1. is in the agency's or Minister's possession but cannot be found; or
 2. does not exist.

The FOI Act is silent about what an Agency must do in terms of searching for documents that may be relevant to a request, that is, it does not provide guidance as to the meaning of 'reasonable steps'.

Paragraph 3.54 of the OAIC FOI Guidelines provides that:

- *Agencies should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practice in the agency's environment. At a minimum, an agency or minister should take comprehensive steps to locate a document, having regards to:*
- *the subject matter of the documents;*
- *the current and past file management systems and the practice of destruction or removal of documents;*
- *the records management systems in place;*
- *the individuals within an agency who may be able to assist with the location of documents; and*
- *the age of the documents.*

The Information Commissioner considers that, as a minimum, an agency should conduct a search by using existing technology and infrastructure to conduct an electronic search of documents, as well as making enquiries of those who may be able to help locate the documents.

I am satisfied the Department has taken all reasonable steps to find the document that is the subject of the Applicant's FOI request and that the document does not exist within the Department.

Accordingly, I have decided to refuse the Applicant's FOI request under subsection 24A(1) of the FOI Act.

E. REVIEW RIGHTS

This decision is subject to review under section 54 or section 54L of the FOI Act. I have attached the Office of the Australian Information Commissioner's *FOI Fact Sheet 12 – Your review rights* for information.



Christopher Swain

Director

Office of the General Counsel

5 February 2016