



## **Statement of reasons made under the *Freedom of Information Act 1982***

Decision and reason for decision of Michael Sutton, A/g Executive Director, Surface  
Transport Policy

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**Applicant:** Steven Bode  
**Decision date:** February 2016  
**FOI reference number:** 16-55  
**Documents:** Number of registered ICVs

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## Summary

1. I have made a decision that documents in scope of your request do not exist in the possession of the Department.

## Authority to make this decision

2. I, Michael Sutton, A/g Executive Director, Surface Transport Policy, am an officer authorised by the Secretary of the Department of Infrastructure and Regional Development (the Department) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (FOI Act).

## Background

3. On 31 January 2016, you made a request for access to documents in the possession of the Department via [righttoknow.org.au](http://righttoknow.org.au). Your request sought access to:

*"How many ICV's (Individually Constructed Vehicle) that are registered in Australia?"*

4. On 3 February 2016, the Department wrote to you advising that the information you request is not of a kind ordinarily acquired by or reported to the Department and that the information you seek is not in the possession of the Department. The Department requested that you respond to our correspondence; either withdrawing your request or indicating that you sought a formal decision. No response has been received.

## Decision

5. My decision under subsection 24A (1) of the FOI Act is made on the basis that all reasonable steps have been taken to find the information requested, and the information sought does not exist.
6. I am satisfied that all reasonable steps have been taken to find information relevant to your request, having regard to:
  - the subject matter of the documents;
  - the current and past file management systems and the practice of orderly destruction or removal of documents;
  - the Department's record management systems and practices; and
  - the individuals and areas within the Department who may be able to assist with the location of the information.
7. Despite undertaking searches, the Department has been unable to identify any documents relevant to your request.
8. On that basis, I am refusing your request for access to the information under section 24A of the FOI Act.

## Your rights of review

9. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).

## **Internal Review**

10. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

**Post:** FOI Coordinator  
Department of Infrastructure and Regional Development  
GPO Box 594, Canberra ACT 2601  
**Fax:** (02) 6275 1347  
**Email:** <FOI@infrastructure.gov.au>

## **Information Commissioner Review**

11. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
12. You can ask the OAIC to review the Department's decision. You do not need to seek an internal review from the Department before seeking a review from the OAIC. However, going through the Department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
13. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
14. You must apply in writing and you can lodge your application in one of the following ways:

**Online:** <www.oaic.gov.au>  
**Post:** Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001  
**Facsimile:** (02) 9284 9666  
**Email:** <enquiries@oaic.gov.au>  
**In person:** Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <[www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights)>.

## **Relevant provisions**

15. I have enclosed copies of the provisions of the FOI Act relevant to your request at Schedule 1 to this letter.

## Contacts

16. If you wish to discuss this decision, please contact the Department's FOI coordinator on (02) 6274 6495 or via email at <FOI@infrastructure.gov.au>.



Michael Sutton  
A/g Executive Director  
Surface Transport Policy  
February 2016

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## Schedule of relevant provisions in the FOI Act

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### 3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
  - (a) requiring agencies to publish the information; and
  - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
  - (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;
  - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

### 11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
  - (a) a document of an agency, other than an exempt document; or
  - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
  - (a) any reasons the person gives for seeking access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

### 11A Access to documents on request

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

(2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

*Mandatory access—general rule*

(3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

*Exemptions and conditional exemptions*

(4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

(5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

(6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

- (a) a conditionally exempt document; and
- (b) an exempt document:
  - (i) under Division 2 of Part IV (exemptions); or
  - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

## **11B Public interest exemptions—factors**

*Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

*Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
  - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (b) inform debate on a matter of public importance;
  - (c) promote effective oversight of public expenditure;
  - (d) allow a person to access his or her own personal information.

*Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
  - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
  - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  - (d) access to the document could result in confusion or unnecessary debate.

#### *Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

### **23 Decisions to be made by authorised persons**

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

(see section 11A).

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

#### **Document lost or non-existent**

- (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.

#### **Document not received as required by contract**

- (2) An agency may refuse a request for access to a document if:
  - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and

(c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.