



In reply please quote:

FOI Request: FA 16/03/00132

File Number: ADF2016/9731

14 April 2016

Jade Loiterton

BY EMAIL: foi+request-1674-d7c9b3c0@righttoknow.org.au

Dear Ms Loiterton

I refer to your email dated 28 February 2016 in which you request access to documents held by the Department of Immigration and Border Protection (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

I note that on 2 March 2016, the Department wrote to you requesting an extension of time under section 15AA of the FOI in relation to the processing of this request. A further email was sent to you on 30 March 2016. The Department does not appear to have received a response from you to either of those emails.

Scope of Request

You have requested access to the following documents held by the Department:

'Documentation that provides information from 1st February 2000 to the current day between the Australian Institute of Petroleum and the Government of Australia about importation of petroleum into Australia.'

This letter is to notify you of my decision on access to the documents subject to your request.

Decision on access

I am authorised under section 23 of the FOI Act to make decisions to release and to refuse access to exempt documents.

Inquiries have been made with a number of business areas within the Department, and no documents have been identified as being relevant to the scope of your request.

Searches of the Department's electronic records management system has identified four files containing the term "Australian Institute of Petroleum" in the title. However, those files are dated 1985, 1987, 1988 and 1995. The files dated 1985, 1988 and 1995 have all been destroyed under the then Australian Customs and Border Protection Service (ACBPS) Records Disposal Authority and in any event pre-date the timeframe of your request. The 1987 file, whilst the system indicates is still in existence, also pre-dates the scope of your request and as such, has not been reviewed.

I note that responsibility for excise equivalent goods (EEG's), which includes petroleum, was transferred from the then ACBPS to the Australian Tax Office (ATO) in 2010. It is therefore possible that any correspondence from Australian Institute of Petroleum to the Government in relation to the importation of petroleum into Australia would have been with the ATO and not the then ACBPS.

I also note, given the timeframe of your request (over a period of 16 years) that any documents that may have existed prior to 2010 may have been subject to the then ACBPS Records Disposal Authority, as referenced above.

I am satisfied that the Department has undertaken reasonable searches in relation to your request, and that no documents were in the possession of the Department on 28 February 2016 when your FOI request was valid.

The Department therefore has no records to produce. My decision is based on the application of section 24A of the FOI Act.

Legislation

I have attached an extract of the relevant provision of the FOI Act for your information at **ATTACHMENT A**.

Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days. Applications for review should be sent to:

Freedom of Information Section
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

OR

By email to: foi@border.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Making a Complaint

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by the Department in relation to your request.¹

The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone 1300 362 072 (local call charge)

Email ombudsman@ombudsman.gov.au

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Ombudsman or the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Immigration and Border Protection as the relevant agency.

Contact

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@border.gov.au.



Alison Smith

FOI Officer | Freedom of Information Section

Information Management Branch

Corporate Services Division

Department of Immigration and Border Protection

¹ On 13 May 2014, the Australian Government announced a decision to disband the Office of the Australian Information Commissioner (OAIC). However, the Freedom of Information Amendment (New Arrangements) Bill 2014, which proposes the closure of the Office of the Australian Information Commissioner (OAIC), has not yet been considered by the Senate. The OAIC therefore remains operational until further notice. Information on the OAIC public website advises that Information Commissioner reviews will continue to be handled by the OAIC and FOI complaints will be referred to the Commonwealth Ombudsman. Please contact the OAIC on the details above if you require further information.

ATTACHMENT A

Section 24A - 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.