



**Australian Government**  
**Australian Public Service Commission**

Mr Dwayne Brewski  
By email: [foi+request-1818-c5b9ee4f@righttoknow.org.au](mailto:foi+request-1818-c5b9ee4f@righttoknow.org.au)

Dear Mr Brewski

**Freedom of information request**

I am writing in relation to your email message dated 15 April 2016 in which you requested access to documents under the *Freedom of Information Act 1982* (FOI Act).

**SCOPE OF YOUR REQUEST**

In your message of 15 April 2016, you requested access to documents in the following terms:

I refer to the article in the Canberra Times, "APS bosses 'self serving' in calls for greater secrecy over FoI laws", published 15 April 2016 (<http://www.canberratimes.com.au/national...>).

I request any documents which detail:

- The nature of suggested changes to FOI laws, and/or
- Evidence to support any related claims made by the department or its staff

Your request refers to an article published in the Canberra Times on 15 April 2016 titled '*APS bosses 'self serving' in calls for greater secrecy*'. This article describes comments regarding the current status of the FOI Act made by a number of senior people, including the Australian Public Service Commissioner and Professor Peter Shergold AC during an event hosted by the Institute of Public Administration Australia (IPAA) ACT Division on 11 April 2016. The IPAA has published a video recording of the event on its website at:

- <http://www.act.ipaa.org.au/2016-pastevent-failure>

The independent report prepared by Professor Shergold which is referred to in the article has already been publicly released. This report details the nature of the changes which Professor Shergold recommended to the FOI Act. Your request refers to evidence supporting 'any related claims made by the Department or its staff.' Please note that Professor Shergold is not an officer or employee of the Australian Public Service Commission (APSC).

The comments made by the Australian Public Service Commissioner at the IPAA event essentially endorsed the conclusions concerning the FOI Act reached by Professor Shergold in his report. Neither the Commissioner nor the staff of the APSC have made any other claims related to Professor Shergold's proposals about the FOI Act.

The Commissioner was asked whether he holds any documents relevant to your request. The Commissioner advised that:

*My views are formed from my experience of 40 years in the public service, in both the Commonwealth and states and more particularly over 30 years as a senior executive and CEO.*

*I have not requested nor received any briefings on this issue.*

*The issue is canvassed widely on the public record, including in the Shergold Report. Also, I was questioned at length at Senate Estimates... [on 19 October 2015].*

*In regard to the changes sought I endorse the Shergold conclusion that advice given in the deliberative processes of Government decision making being exempt.*

To the extent that the Commissioner's comments at the IPAA event included any claims related to the changes suggested by Professor Shergold, I am satisfied that any evidence to support those claims would simply have been the Commissioner's personal recollections as noted above. Further, as noted above, the Commissioner neither requested nor received any briefings on the subject. Responsibility for the administration of the FOI Act currently rests with the Attorney-General.

## **DECISION AND REASONS FOR DECISION**

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

Under section 24A of the FOI Act, an agency 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 does not exist. I am satisfied that the Commission has taken all reasonable steps to find any document that is relevant to your request and that no such documents exist.

As the documents you seek do not exist, I cannot grant you access to them. I have reproduced the relevant section of the FOI Act below for your information:

### **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.

## **Your review rights**

If you are not satisfied with my decision, you may apply for internal review or to the Australian Information Commissioner for review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

### **Australian Information Commissioner review**

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Australian Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review-/>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

### **Questions about this decision**

If you wish to discuss this decision, please contact the Commission's FOI contact officer by email at [foi@apsc.gov.au](mailto:foi@apsc.gov.au) or by telephone on 02 6202 3571.

Yours sincerely



Karin Fisher  
Group Manager  
Employment Policy Group

16 May 2016