



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2016/081

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Ms Morna Kensworthy (OBO Right to Know)

DECISION BY: Mr Peter Arnaudo
Assistant Secretary
Honours, Symbols and Legal Policy Branch

The FOI request

In an email dated 17 April 2016 the applicant made a request to the Department of the Prime Minister and Cabinet under the *Freedom of Information Act 1982* (the FOI Act) with the subject heading 'Freedom of Information request - any and all documents relating to the 1989 Pilots Dispute' and in the following terms:

I am researching the events of the 1989 Pilots Dispute with the intention of writing an account of those times. I have information from the Australian Federation of Air Pilots, but as the airlines involved in the dispute do not now exist, this request for information to your Department is my last avenue to seek data with which to balance my account of the Dispute and its aftermath.

On 3 May 2016, the Department's FOI Action Officer wrote to the applicant as follows:

Access to public lists and invitation to withdraw FOI request

This is to advise you that any documents within the scope of your request would fall into the open access period under the *Archives Act 1983*. They are therefore not accessible under the *Freedom of Information Act 1982* (subsection 12(1) of the FOI Act refers).

Accordingly, we suggest you direct your request for these documents to the National Archives of Australia either on (02) 6212 3600 or www.naa.gov.au.

Having regard to the decision-maker's view that you would not be entitled to obtain access to the documents you have sought, as they would be under the open access period as set out above, we kindly seek your agreement to withdraw your FOI request. We would be grateful if you could please respond by next Monday, 9 May 2016 confirming your agreement to withdraw your FOI request.

I am advised that the applicant has not responded.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Decision

I have decided to refuse the request under section 12(1)(a) of the FOI Act.

Reasons for decision

Section 12(1)(a) of the FOI Act provides that a person is not entitled to obtain access under the FOI Act to a document, or a copy of a document, which is, under the *Archives Act 1983* (the Archives Act), within the open access period within the meaning of that Act unless the document contains personal information.

The applicant is seeking information concerning the 1989 Pilots Dispute. I have considered the issue and understand that for Commonwealth records created in 1988 and 1989, the open access period within the meaning of the Archives Act began on 1 January 2015; and for Commonwealth records created in 1990 or 1991, the open access period within the meaning of the Archives Act began on 1 January 2016. More information about accessing records in the open access period is available from the National Archives of Australia, www.naa.gov.au.

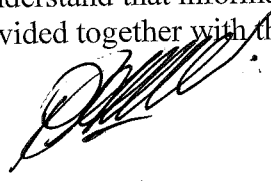
Accordingly, I am satisfied that the documents sought by the applicant, if they exist, would be in the open access period under the Archives Act and therefore the applicant has no right of access under the FOI Act to those documents.

Processing and access charges

I have decided not to impose a charge for this request.

Review and complaint rights

I understand that information about the applicant's rights of review and complaint will be provided together with this decision.



Peter Arnaudo
Assistant Secretary
Honours, Symbols and Legal Policy Branch

// May 2016



Freedom of information – Your review rights

July 2012

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see FOI fact sheet 13 – *Freedom of information: How to make a complaint*.

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:


online: www.oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

fax: +61 2 9284 9666

email: enquiries@oaic.gov.au

in person: Level 8, Piccadilly Tower
133 Castlereagh Street
Sydney NSW



An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. There is a fee for lodging an AAT application, although there are exemptions for health care and pension concession card holders, and the AAT can waive the fee on financial hardship grounds. For further information see www.aat.gov.au/FormsAndFees/Fees.htm.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: enquiries@oaic.gov.au

write: GPO Box 2999, Canberra ACT 2601
or visit our website at www.oaic.gov.au

Complaint rights

The applicant may make a complaint to the Information Commissioner or the Commonwealth Ombudsman about the Department's actions in relation to this decision. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision.

Please note: From 1 November 2014 the Information Commissioner will refer all FOI complaints to the Commonwealth Ombudsman.

A complaint to the Information Commissioner must be in writing and identify the agency in respect of which the complaint is made. The Office of the Australian Information Commissioner (OAIC) may be contacted by phone (1300 363 992), email (enquiries@oaic.gov.au) or by letter (GPO Box 2999, Canberra ACT 2601). Further information about the OAIC can be found on their website: <https://www.oaic.gov.au/>

A complaint to the Commonwealth Ombudsman may be made orally or in writing. You may make a complaint to the Office of the Commonwealth Ombudsman by phone (1300 362 072), by letter (GPO Box 442 Canberra ACT 2601), by fax (02 6276 0123), in person or through their online complaint form. Further information about the Commonwealth Ombudsman can be found on their website: <http://www.ombudsman.gov.au/>.