

Our ref: FOI-2016-50025

21 April 2016

Mr James Smith

By email to: foi+request-1849-31a1aa30@righttoknow.org.au

Dear Mr Smith

Your Freedom of Information (FOI) request dated 18 April 2016

I refer to your email received by the Ombudsman's office on 18 April 2016, in which you sought access to certain documents under the *Freedom of Information Act 1982* (the FOI Act). Your request was framed in the following way:

'...I seek access to the following documents under the Freedom of Information Act 1982:

1. Current social media policy of the department, which covers departmental use and/or private use by employees in an individual capacity.
2. Any current guidance material which is available for employees to make informed decisions about their private social media use...'

This letter constitutes notice of my decision on your request for access. I am authorised to make decisions on behalf of our office under s 23 of the FOI Act.

Decision

We have searched our records for any documents this office may hold that would fall within the scope of your request. We have searched for any policy documents or internal emails which would meet the description of the documents you seek. Having not located any relevant documents, I am satisfied that no documents within the scope of your request exist.

Subsection 24A(1) of the FOI Act permits refusal of a request for access to a document where all reasonable steps have been taken to find the document and the agency or Minister is satisfied that the document does not exist. Having regard to the outcome of our searches for relevant documents, I have decided to refuse your request under subsection 24A(1) of the FOI Act.

In reaching my decision, I took the following things into account:

- your correspondence outlining the particulars of your request
- the FOI Act, and
- relevant Guidelines issued by the Australian Information Commissioner.

In searching for documents which might fall within the scope of your request, I have been informed that this office is currently developing guidelines for social media use by our staff.

Review rights

Internal review

Under s 54 of the FOI Act, you may apply in writing to our office for an internal review of my decision. The internal review application must be made within 30 days of the date on which you were notified of my decision.

Where possible, please attach reasons for why you believe review of the decision is necessary. The internal review will be carried out by another Ombudsman officer within 30 days.

Review by the Australian Information Commissioner

You may apply to the Office of the Australian Information Commissioner (OAIC) to review my decision. The Australian Government announced as part of the 2014-15 Budget that the OAIC would be disbanded from 31 December 2014. However, legislation to give effect to this change was not considered by the Senate before the end of the 2014 sitting period. At this stage, Information Commissioner reviews can still be lodged with the OAIC.

If the OAIC does not think it can complete a review, it may deal with the matter under s 54W(b) of the FOI Act. Under s 54W(b) of the FOI Act, the OAIC may finalise a review by deciding that it is desirable in the interests of the administration of the FOI Act that the matter be reviewed instead by the Administrative Appeals Tribunal (AAT). If this occurs, the applicant can apply to the AAT in accordance with normal AAT procedures.

An application for review by the OAIC must be made in writing, and be lodged in one of the following ways:

- online at <https://forms.australia.gov.au/forms/oaic/foi-review/>
- via email to enquiries@oaic.gov.au
- by post to GPO Box 5218, Sydney NSW 2001
- in person to Level 2, 175 Pitt Street, Sydney NSW.

More information about OAIC review is available on the OAIC website. Go to www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Complaints to the Commonwealth Ombudsman

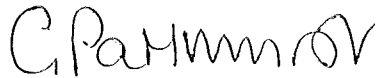
You may make a complaint to this office if you are dissatisfied with the manner in which we have processed your request. The Ombudsman will arrange for an independent consideration of your complaint, and ensure that the matter is handled by a person who has not had prior involvement with your FOI request.

You may complain to this office in writing using the contact information set out at the top of this letter. There is no fee for making a complaint.

Contacts

If you require clarification of any of the matters discussed in this letter you should contact me on 1300 362 072.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Parkhurst'.

Gregory Parkhurst
FOI Co-ordinator

ATTACHMENT A – Relevant FOI Act provisions

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).

54 Internal review—access refusal decision

- (1) This section applies if an access refusal decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.
- (2) The applicant in relation to the request may apply under this Part for the review (the *internal review*) of the access refusal decision.

54L IC reviewable decisions—access refusal decisions

- (1) An application may be made to the Information Commissioner for a review of a decision covered by subsection (2).
- (2) This subsection covers the following decisions:
 - (a) an access refusal decision;
 - (b) a decision made by an agency on internal review of an access refusal decision (see section 54C);
 - (c) a decision refusing to allow a further period for making an application for internal review of an access refusal decision (under section 54B).

Note 1: An application for the review of an access refusal decision made for the purposes of paragraph (a) may be made regardless of whether the decision was the subject of internal review.

Note 2: If no decision is made on internal review within 30 days, a decision to affirm the original access refusal decision is taken to have been made (see section 54D).

- (3) The IC review application may be made by, or on behalf of, the person who made the request to which the decision relates.