



16 September 2016

Fraser Tweedale

via email: fori+request-2139-b4fd9cdd@righttoknow.org.au

Dear Mr Tweedale

RE: Application for documents under the Commonwealth Freedom of Information Act 1982

I refer to your Freedom of Information request received on 18 August 2016 in which you seek access to documents under the Freedom of Information Act 1982 ("FOI Act"). You have requested the following from Australia Post:

"...[documents in respect to the registration of] 'AUSPOST' brand generic top-level domain (gTLD) with the Internet Corporation for Assigned Names and Numbers (ICANN), [specifically:]

- 1. Documents detailing the reasons for registering the "AUSPOST" gTLD.*
- 2. Documents showing how the decision to register the "AUSPOST" gTLD was reached and who approved the decision.*
- 3. Documents showing the upfront costs to Australian Postal Corporation of the application, including amounts paid to ICANN or other entities as part of the application or registration procedure.*
- 4. Documents detailing the projected operational costs of managing the "AUSPOST" gTLD.*
- 5. Documents containing the cost-benefit analyses pertaining to the registration and operation of the "AUSPOST" gTLD...."*

Decision

I have decided that the Australian Postal Corporation ("Australia Post") is exempted by section 7(2) of the FOI Act from releasing any documents which fall within the description of documents in your FOI application.

I make my decision on the basis of Section 7(2), (3), (4) and Part II of Schedule 2 of the FOI Act.

The combined effect of these provisions is that Australia Post is exempt from the operation of the FOI Act in relation to documents in respect of its activities carried on a commercial basis in competition with non-government persons or entities. This extends to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.

Reason for Decision

Commercial Activities exemption

Schedule 7(2) of the FOI Act provides that agencies specified in Part II of Schedule 2 are exempt from the operation of the FOI Act *"in relation to the documents referred to in that Schedule in relation to them"*.

Part II of Schedule 2 of the FOI Act exempts:

...Australian Postal Corporation, in relation to documents in respect of its commercial activities...

According to Section 7(3), the term “commercial activities” in Part II of Schedule 2 means:

- (a) *activities carried on by an agency on a commercial basis in competition with persons other than governments or authorities of governments; or*
- (b) *activities, carried on by an agency that may reasonably be expected in the foreseeable future to be carried on by the agency on a commercial basis in competition with persons other than governments or authorities of governments.*

Section 7(4) provides:

a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.”

It should also be noted that the definition of “exempt documents” in Section 4 of the FOI Act includes:

- (b) *a document in respect of which, by virtue of Section 7, an agency is exempt from the operation of this Act;....”*

Pursuant to Section 7(2) of the FOI Act, Australia Post is exempt from the operation of the FOI Act in respect to the documents requested by you relating to the registration of AUSPOST brand generic top-level domain (gTLD).

Detailed Consideration

In applying the exemption in Part II of Schedule 2, the relevant enquiries are:

1. Is the registration of the AUSPOST gTLD an activity which Australia Post carries on on a commercial basis and an activity that is carried on in competition with persons other than governments or the authorities of governments?
2. Were the documents received or brought into existence in the course of, or for the purposes, the carrying on of those activities?

Among its many functions, Australia Post carries on a significant amount of its commercial activities online and through eCommerce. This is a rapidly growing sector with many private sector entities who compete with Australia Post seeking to gain greater market share. The strategic approach to domain name registrations and the cost of those registrations relate to activities carried on in direct competition with third parties. The competitive nature of the activities is unequivocally “commercial”. The domain name extension documents sought were brought into existence for the purposes of carrying on of eCommerce activities and therefore fall within the commercial activities of Australia Post.

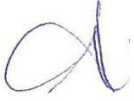
By virtue of the operation of Section 7(2) in conjunction with Section 2 Part II of the FOI Act, my decision is that Australia Post is exempt from the operation of the FOI Act in relation to its commercial activities, and accordingly the documents noted in your application will not be produced to you.

Rights of Review

If you are unhappy with this decision you have the right to seek either;

- (i) An internal review by writing within 30 days of receiving this letter to Australia Post, FOI Review Officer, Legal Services Group, GPO Box 1777, Melbourne VIC 3001, foi@auspost.com.au; or
- (ii) A review of this decision by writing within 60 days of receiving this letter to the Information Commissioner, GPO Box 2999, Canberra ACT 2601, Fax: 02 9284 9666, enquiries@oaic.gov.au.

Yours sincerely,



Anna Oliver
FOI Officer
Australia Post
foi@auspost.com.au