



Ms Revelly Robinson

By email: foi+request-2168-51c4df39@righttoknow.org.au

Dear Ms Robinson

Freedom of Information - Access Decision Letter
Request No. 160902

I refer to your request of 26 August 2016 to the Department of the Environment and Energy (the **Department**), in which you have sought access under the *Freedom of Information Act 1982* (Cth) (the **FOI Act**) to:

The guidelines for Green Army 'election commitment' projects, as required under the Commonwealth Grant Rules and Guidelines.

Authority

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to this request.

Decision

After considering your FOI request and Departmental records, I have decided to refuse you access to the requested documents pursuant to subsection 24A(1) of the FOI Act as I am satisfied documents falling within the scope of your request do not exist.

Material considered in making decision

In making my decision I have considered:

- the FOI request;
- the FOI Act; and
- the Office of the Australian Information Commissioner (the **OAIC**), *Guidelines under s 93A of the FOI Act (FOI Guidelines)*.

I am required under section 26 of the FOI Act to provide a statement of reasons for my decision and make the following statement setting out my findings on the material.

My decision and the reasons for my decision to refuse to grant access to the requested documents, or to information contained in particular documents, is set out below.

Reasons for Decision (Statement of Reasons pursuant to section 26 of the FOI Act)

Section 24A – Requests may be refused if documents cannot be found

Subsection 24A(1)(b)(ii) of the FOI Act provides that a request for access may be refused if all reasonable steps have been taken to find the document and the agency is satisfied that the document does not exist.

The Green Army Programme is not a grant programme and is, therefore, not subject to the Commonwealth Grants Rules and Guidelines (the **Guidelines**). Accordingly, Section 4.4 of the Guidelines, requiring the development of grant guidelines, is not applicable.

Accordingly, I have decided to refuse your request for access pursuant to subsection 24A(1) of the FOI Act.

The election commitment projects for the Green Army Programme are delivered by Service Providers who were selected by the Department to deliver the programme as part of a formal tender process consistent with the Commonwealth Procurement Rules. The Service Providers were engaged by the Department under Deeds of Standing Offer. The template Deed and other relevant documentation relating to the procurement process, including the Programme Guidelines, are available on the Department's website: <http://environment.gov.au/land/green-army/development-process>. The Programme Guidelines are applicable to all Green Army Programme projects, including those selected by the Minister as election commitment projects.

Review rights

Under the FOI Act you may seek a review of my decision through:

- an internal review that is conducted by the Department – see Part VI of the FOI Act; or
- a review by the Information Commissioner – see Part VII of the FOI Act.

Further information regarding your review rights is available at **Attachment A** and the **enclosed** OAIC's FOI Fact Sheet 12 titled *Freedom of Information – your review rights*.

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au for any assistance with your request.

Yours sincerely



Matthew Dadswell
Assistant Secretary
Program Support Branch

19 September 2016



Australian Government

Department of the Environment and Energy

Internal Review

If you wish to seek an internal review, you must apply to the Department within 30 days after the day you are notified of this decision.

An application for internal review of the decision made must be made in writing. No particular form is required but it is helpful if you set out in the application the grounds on which you consider that the decision should be reviewed. Your application for an internal review should be sent to:

By post

FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
Canberra ACT 2601

By email

Email: foi@environment.gov.au

Review by the Information Commissioner

Alternatively, you may seek a review of my decision by the Information Commissioner.

The option to seek an internal review (see above) does not prevent you from seeking a review by the Information Commissioner at a later stage – this is because the Information Commissioner can also review an internal review.

If you wish to seek a review of my decision by the Information Commissioner you must apply within 60 days after the day on which notice of this decision was given to you or after the day on which notice of the internal review decision was given.

Your application must be in writing and must provide details of how notices may be sent to you and include a copy of this decision letter. The Information Commissioner also suggests that your application sets out why you are objecting to the decision. Your application can be lodged in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

In person: Level 3, 175 Pitt Street, Sydney, NSW 2000



FOI Fact Sheet 12: Freedom of information – Your review rights — April 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.

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.

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 5218, Sydney NSW 2001

fax: +61 2 9284 9666

email: enquiries@oaic.gov.au

in person: Level 3, 175 Pitt Street, Sydney, NSW 2000

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.