



Australian Government
Attorney-General's Department
Office of Corporate Counsel

13/8475

18 July 2013

Mr G King
foi+request-278-0869677e@righttoknow.org.au

Dear Mr King

Freedom of Information request no. 13/091

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary

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

You requested access to documents relating to telecommunications data provided to enforcement agencies under the *Telecommunications (Interception and Access) Act 1979* (TIA Act) on 2 July 2013. Specifically you sought access to:

- *details of the telecommunications data ('metadata') disclosed to enforcement agencies under the Telecommunications (Interception and Access) Act 1979. The specific information I require is sources of data (e.g. "Telstra"), types of data (e.g. "email") and entities of data (e.g. "recipient", "date sent", etc).*

On 2 July 2013, the Department acknowledged your request as a valid request under s15 of the FOI Act. I note you sent two requests in the same terms to the Department on this date, the second one clarifying that it was a request under the FOI Act. I have treated the second email as a clarification of your first email, rather than a separate request.

I have identified that the Attorney-General's Department has no documents that fall within the scope of your request. I did this by arranging for an electronic search of documents, as well as making enquiries of those who may have been able to help locate relevant documents.

I have accordingly decided to refuse your request for access to the documents. More information, including my reasons for my decision, is set out below.

Decision and reasons for decision

With regard to the documents requested in your application, I have found that:

- the documents you requested about data provided to enforcement agencies under the TIA Act do not exist (section 24A(1)(b)(ii)) - information about why they do not exist is given below.

Telecommunications data ('metadata') is accessed by national security agencies and enforcement agencies pursuant to an authorisation made under the TIA Act. The Department is not considered a national security or enforcement agency for the purposes of the TIA Act.

National security and enforcement agencies can only access metadata in limited circumstances. Authorising officers of an agency must be satisfied that the disclosure of the information is reasonably necessary for national security purposes, the enforcement of the criminal law, the enforcement of a law imposing a pecuniary penalty or for the protection of the public revenue.

The TIA Act balances the needs of these agencies and their ability to investigate serious crime and safeguard national security with the need to protect the privacy of personal communications. Section 180F of the TIA Act requires authorised officers to consider whether any interference with the privacy of any person or persons that may result from the disclosure or use is justifiable in the light of the likely relevance and usefulness of the information obtained, and the reason why the disclosure or use is proposed.

Further, there are restrictions on the disclosure and use of information obtained under an authorisation. For example, section 181B of the TIA Act prohibits the disclosure and use of information about an authorisation and information obtained under an authorisation except in limited circumstances, such as where the disclosure is reasonable necessary for national security purposes, the enforcement of the criminal law, the enforcement of a law imposing a pecuniary penalty or for the protection of the public revenue.

Enforcement agencies are required to retain the authorisations for a period of 3 years and report to the Attorney-General annually on the number of authorisations made.

Material taken into account

I have taken the following material into account in making my decision:

- the FOI Act (specifically sections 24A(1)(b)(ii))
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Findings on material questions of fact

My findings on material questions of fact are that the documents you requested do not exist.

Documents non-existent (s 24A(1)(b)(ii))

Under section 24A(1)(b)(ii) of the FOI Act, an agency may refuse a request for access to documents if:

- (a) all reasonable steps have been taken to find the document; and*
- (b) the agency or Minister is satisfied that the document:*

...

(ii) *does not exist.*

Following all reasonable steps to find the documents, I am satisfied that the documents that you have requested under parts 2-8 do not exist, so I have decided to refuse access to parts 2-8 of your request for documents under Section 24A(1)(b)(ii) of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner 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.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

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

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 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.australia.gov.au/forms/oaic/foi-review/>
email: enquiries@oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW

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

Questions about this decision

If you wish to discuss this decision, please contact the action officer, Samantha Fuz, on (02) 6141 4105 or e-mail foi@ag.gov.au.

Yours sincerely



Wendy Kelly
Acting Assistant Secretary