



**Internal review decision made under the *Freedom of Information Act 1982***

Internal review decision and reasons for decision of Pip Spence, Deputy Secretary,  
Department of Infrastructure and Regional Development

---

**Applicant:** Rob Cumming

**Agency:** Department of Infrastructure and Regional Development

**Date of original decision:** 12 January 2017

**Internal review decision date:** February 2017

**FOI reference number:** 17-55

**Documents:** Expenditure of funds allocated to CASA

**Contents**

**Summary ..... 2**

**Authority to make this decision ..... 2**

**Background ..... 2**

**Decision ..... 2**

**Reasons for decision ..... 2**

**Your rights of review ..... 3**

**Contacts ..... 4**

**Schedule 1: Schedule of relevant provisions in the FOI Act ..... 5**

## Summary

1. I have made a decision to affirm the original decision made by Jim Wolfe, Acting Executive Director, Aviation and Airports, not to release any documents subject to your request.

## Authority to make this decision

2. I, Pip Spence, acting Deputy Secretary, am an officer authorised by the Secretary of the Department of Infrastructure and Regional Development (the Department) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

## Background

3. On 13 December 2016 you made a request for access to documents in the possession of the Department. Your request sought access to:

*“In June 2010, the Australian Parliament increased the allocation of excise for avtur and avgas to CASA by increasing the excise level. This was following your Department's representation to Minister Albanese. Estimates at the time indicated in a four period, \$89.9m would be allocated to CASA until June 2014. Since 2014, the levy has remained. I require the evidence and final use of those funds as directed by your Department in terms of:*

1. *Where expended;*
2. *Comparison with the source and the application of those funds in the following way:*
  - *July 2010 to June 2011*
  - *July 2011 to June 2012*
  - *July 2012 to June 2013*
  - *July 2013 to June 2014*
  - *July 2014 to June 2015*
  - *July 2015 to June 2016”*

4. On 12 January 2017 you were provided with a decision relating to access to documents within scope of your request. You were refused access to the documents that you requested, on the grounds that they did not exist, in accordance with section 24(1) of the FOI Act.
5. On 18 January 2017 you requested an internal review of the decision to refuse access to the requested documents.

## Decision

6. In accordance with section 24A, I have made a decision to affirm the original decision made by Jim Wolfe, Acting Executive Director, Aviation and Airports, that documents subject to your request do not exist or cannot be found.

## Reasons for decision

7. In accordance with section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to refuse access to documents, follow.

8. I have taken the following material into account in making my decision:
- the content of the documents that you have requested;
  - the statements that you made in your email dated 18 January 2017;
  - the following provision of the FOI Act relevant to my decision:
    - section 22: Requests may be refused if documents cannot be found, do not exist or have not been received
  - sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth; and
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).
9. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 1.
10. You have requested documents regarding the spending of funds allocated to the Civil Aviation Safety Authority (CASA) since 2010.
11. I acknowledge your assertion that the Department was involved in the original funding proposal with Minister Albanese; however, the Department's involvement in this process ended once the original proposal was accepted.
12. CASA is an independent statutory authority, and is responsible for its own budget and spending decisions. The Department has no authority, and no oversight, over CASA's budget or spending decisions. As such, the Department would not hold any documents regarding this spending. This has been confirmed through searches conducted by relevant business areas within the Department.
13. On the basis of the above, I am refusing access to the documents you have requested under section 24A of the FOI Act.
14. The information you are seeking may already be publicly available on the CASA website: <https://www.casa.gov.au/landing-page/publications-and-resources/corporate-publications>
15. To obtain further information, you may wish to lodge a Freedom of Information request directly with CASA: <https://www.casa.gov.au/standard-page/freedom-information>

## **Your rights of review**

16. If you disagree with this review decision, you can ask for the decision to be externally reviewed by the Office of the Australian Information Commissioner (OAIC).
17. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions. You can ask the OAIC to review the Department's review decision.
18. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.

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

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)

**Post:** Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001

**Facsimile:** (02) 9284 9666

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

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

More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: [www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-factsheets/foi-factsheet-12-your-review-rights](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-factsheets/foi-factsheet-12-your-review-rights)

## Contacts

20. If you wish to discuss this decision, please contact the Department's FOI coordinator on (02) 6274 6495 or via email at [foi@infrastructure.gov.au](mailto:foi@infrastructure.gov.au)



Pip Spence  
Acting Deputy Secretary  
Department of Infrastructure and Regional Development

8 February 2017



## Schedule of relevant provisions in the FOI Act

---

### 3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
  - (a) requiring agencies to publish the information; and
  - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
  - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
  - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

### 11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
  - (a) a document of an agency, other than an exempt document; or
  - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
  - (a) any reasons the person gives for seeking access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

### 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).

### **24A Requests may be refused if documents cannot be found, do not exist or have not been received**

#### **Document lost or non-existent**

- (1) An agency or Minister may refuse a request for access to a document if:
  - (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

#### **Document not received as required by contract**

- (2) An agency may refuse a request for access to a document if:

- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
- (b) the agency has not received the document; and
- (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.