



Our reference: FOIREQ17/00043

Ms Verity Pane

By email to: foi+request-3635-a5651c51@righttoknow.org.au

Dear Ms Pane

Your Freedom of Information request

I refer to your request for access to documents, made under the *Freedom of Information Act 1982* (Cth) (the FOI Act), and received by the Office of the Australian Information Commissioner (OAIC) on 14 June 2017.

You sought access to:

... any documents relating to any satisfaction surveys carried out by the OAIC (or carried out at your direction) of any individual's who made privacy complaints or Information Commissioner Reviews.

If the OAIC has never surveyed (or arranged to have surveyed) individuals who have made privacy complaints or Information Commissioner Review applications to the OAIC, an explicit statement to that effect would be appreciated.

Decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests.

Under s 24A of the FOI Act, I have decided to refuse your request for access to documents relating to satisfaction surveys carried out by the OAIC (or carried out at the OAIC's direction) of individuals who have made privacy complaints or applications for Information Commissioner review on the basis that no documents exist.

My statement of reasons is set out below. I have also added general information regarding satisfaction surveys conducted prior to 2010.

Reasons for decision

Material taken into account

In making my decision, I had regard to the following:

- your freedom of information request dated 14 June 2017

- the FOI Act, in particular ss 4 and 24A
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (the FOI Guidelines), in particular paragraphs [3.80] — [3.84].

Documents do not exist (s 24A)

Section 24A of the FOI Act relevantly provides:

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.

The FOI Guidelines explain:

The Act is silent on what constitutes 'all reasonable steps'. Agencies should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request.¹

To locate documents I asked all relevant staff, including:

- the Assistant Commissioner, Dispute Resolution Branch
- the former Director, Dispute Resolution Branch
- the Assistant Director, Dispute Resolution Branch (with responsibility for reporting and statistics) and
- the Records Manager

whether they held any documents relevant to the request. Searches were also undertaken of the OAIC's electronic records management system TRIM, dating to the establishment of the OAIC on 1 November 2010. No documents falling within the scope of your request were identified.

I am satisfied that all relevant searches have been undertaken to locate the documents you requested and that no documents are in the possession of the OAIC.

As a result, I am refusing your request for access to documents under s 24A of the FOI Act.

Satisfaction surveys

From at least 2004-05, it was the practice of the then Office of the Privacy Commissioner (OPC) to survey members of the public who had lodged a privacy complaint on completion of their matter.

The OPC also conducted a survey of 100 complainants and 41 organisations in February and March 2005. A report of the survey was published in the [2004-05 Annual Report](#) (at Appendix 6). In May and June 2008, another complainant survey was conducted (involving 100 individual complainants).

¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* [3.81].

In 2014, the OAIC started work developing a customer satisfaction 'smartform' for privacy complaints. However in the 2014-15 budget, the government announced an intention to disband the OAIC and work on this project ceased.

In the 2016-17 budget, the government announced it would not go ahead with the disbandment of the OAIC. Consequently, the office is reconsidering whether to undertake a customer satisfaction survey.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Raewyn Harlock', with a long horizontal flourish extending to the right.

Raewyn Harlock
Assistant Director
Dispute Resolution Branch

6 July 2017

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, it is likely that the Information Commissioner will decide (under s 54W(b) of the FOI Act) not to undertake an IC review on the basis that it is desirable that my decision be considered by the AAT.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for internal review or IC review can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you may submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.