



**Australian Government**  
**Australian Transport Safety Bureau**

Our reference: ATSB13/316  
FOI No: FOI 13-14(5)

24 September 2013

Mr Corin Tentchoff

Email: [foi+request-383-6d87593e@righttoknow.org.au](mailto:foi+request-383-6d87593e@righttoknow.org.au)

Dear Mr Tentchoff,

**Access to documents under the Freedom of Information Act 1982 - FOI 13-14(5)**

The decision maker of your request, Mr Julian Walsh, General Manager – Strategic Capability, of the Australian Transport Safety Bureau (ATSB), has made a decision in accordance with the *Freedom of Information Act 1982* (the FOI Act) about access to:

- electronic copies of all internal ATSB emails from July 5-July 8, 2013 regarding the Lac-Mégantic train derailment/explosion in Canada.

Enclosed with this letter you will find:

<u>Attachment A</u>	The decision maker's statement of reasons for your request
<u>Attachment B</u>	A copy of Office of the Australian Information Commissioner (OAIC) FOI Fact Sheet 12 ' <i>Freedom of information – Your review rights</i> '

**REVIEW RIGHTS AND MORE INFORMATION**

This decision is subject to review in accordance with the FOI Act. I have enclosed information about your rights of review and appeal at Attachment B.

Should you have any further queries in relation to this matter, please contact either John Taylor by telephone on (02) 6274 6416 or myself on (02) 6274 6488 or by email at [FOI@atsb.gov.au](mailto:FOI@atsb.gov.au)

Yours sincerely

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FOI Coordinator, Legal Services

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Australia

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## *STATEMENT OF REASONS*

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### AUTHORITY TO MAKE THIS DECISION

I, Julian Walsh, General Manager – Strategic Capability of the Australian Transport Safety Bureau (ATSB), am an officer authorised under Section 23 of the *Freedom of Information Act 1982* (FOI Act) to make decisions regarding access to documents held by the ATSB and associated charges.

What follows is my decision and the reasons for that decision.

### BACKGROUND

On 8 September 2013, the ATSB received your request for access to the following:

- electronic copies of all internal ATSB emails from July 5-July 8, 2013 regarding the Lac-Mégantic train derailment/explosion in Canada.

### DECISION

My decision under section 24A(1)(a)(ii) of the FOI Act is made on the basis that all reasonable steps have been taken to find the information requested, and the information sought does not exist in the records of this agency.

I am satisfied that all reasonable steps have been taken to find the information, having regards to:

- the subject matter of the documents;
- the current and past file management systems;
- ATSB record management systems and practices;
- individuals and areas within ATSB who may be able to assist with the locations of the documents; and
- information provided by you.

On that basis, I am refusing your request for access to the information under section 24A of the FOI Act

A copy of the FOI Act can be downloaded in full from [www.comlaw.gov.au](http://www.comlaw.gov.au)

### REVIEW RIGHTS

If you disagree with this FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the ATSB, and external review by the OAIC.

### *Internal review*

You can ask the ATSB to review its decision. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the ATSB extends the application time. You should contact the ATSB if you wish to seek an extension. The ATSB must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different ATSB officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

**Post:** Freedom of Information Coordinator  
Australian Transport Safety Bureau  
PO Box 967  
CIVIC SQUARE ACT 2608

**Fax:** +61 2 6247 3117

**Email:** FOI@atsb.gov.au

### *External review by the OAIC*

You can ask the OAIC to review the ATSB's decision. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the ATSB's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the ATSB before seeking an external review from the Information Commissioner. However, going through the ATSB's internal review process gives the ATSB the opportunity to reconsider its initial decision and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the 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. Your application to the Information Commissioner can be lodged as follows:

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

**post:** GPO Box 2999  
CANBERRA ACT 2601

**fax:** +61 2 9284 9666

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

**in person:** Level 3,  
175 Pitt Street  
SYDNEY NSW 2000

A copy of FOI fact sheet 12 (Freedom of information – Your review rights) is attached.

## **OUTSTANDING CHARGES**

As your request has been finalised, no processing charges were applicable to your request in this circumstance. This is on the basis that:

- the requested information does not exist in the records of this agency; and
- the amount will be minimal and would exceeded the processing costs.

## OTHER MATERIAL PROVIDED TO YOU

This statement of reasons has been provided to you as part of a package of information.

Should you have any further queries in relation to this matter, please contact either John Taylor by telephone on (02) 6274 6416 or Salina Cheung on (02) 6274 6488 or by email at [FOI@atsb.gov.au](mailto:FOI@atsb.gov.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Walsh', with a small dot at the end.

Julian Walsh  
General Manager, Strategic Capability

24 September 2013



## FOI fact sheet 12: Freedom of information – Your review rights — July 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.

***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](http://www.oaic.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
fax: +61 2 9284 9666  
email: [enquiries@oaic.gov.au](mailto: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](http://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.

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. For further information see [www.aat.gov.au/FormsAndFees/Fees.htm](http://www.aat.gov.au/FormsAndFees/Fees.htm).

**FOI applications made before 1 November 2010**

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

**The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice**