



FOI17/143; 17/9051

18 August 2017

Mr James Smith

By email: foi+request-3883-d09d65c4@righttoknow.org.au

Dear Mr Smith

Freedom of Information request – FOI17/143

The purpose of this letter is to give you a decision about access to documents you requested in two separate requests under the *Freedom of Information Act 1982* (FOI Act) from the Attorney-General's Department, which includes the Australian Government Solicitor.

Summary of your request and my decision

I, Alexandra Mathews, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests made to the Commonwealth Attorney-General's Department (the department).

On 8 August 2017 you made an FOI request to the Australian Government Solicitor (AGS). You subsequently made the same request to the department on 15 August 2017. As the AGS is part of the department, this response relates to both requests.

Your requests sought access to documents relating to advice the department and the AGS has provided to employees regarding the private use of social media. Specifically, you requested:

'I request documents related to the ten most recent instances where an employee has sought information, advice, guidance, or opinion on their social media use in a private capacity.'

I limit the scope of documents to:

- the original request from the employee*
- the agency/department's response*
- any follow-up questions and response*
- only those sent to a relevant HR / conduct / social media (or similar) team (rather than managers across all areas of the organisation)*
- where the original request was created in the last 2 years.'*

Documents held by the department (not including AGS)

I have identified that the department has no documents that fall within the scope of your request. I did this by arranging for a comprehensive search of the department's electronic document management systems and making inquiries of officers likely to have knowledge of this subject matter.

Under subsection 24A(1) of the FOI Act, an agency may refuse a request for access to documents if all reasonable steps have been taken to find the document, and the agency is satisfied that the document cannot be found or does not exist within the agency. I am satisfied that the department does not hold the documents you seek and accordingly I must refuse your request.

Documents held by the AGS (not including the department)

Under subsection 7(2) of the FOI Act, the department, which includes the AGS, is exempt from the operation of the FOI Act in relation to a document held by the department that is in respect of AGS activities. Subsection 7(2) relevantly provides that the Department's specified in Part II of Schedule 2 of the FOI Act 'are exempt from the operation' of the FOI Act 'in relation to documents referred to in... [Schedule 2] in relation to them'. Part II of Schedule 2 of the FOI Act relevantly specifies the department 'in relation to' 'documents in respect of activities undertaken by [the AGS]'.

Activities undertaken by the AGS include the management of staff working to him (or her). The documents sought in your request pertain to the activity of managing staff. As a result, if the AGS was in possession of any documents relevant to your request, they would be exempt in respect of that activity under subsection 7(2) 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 department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email: foi@ag.gov.au
post: Freedom of Information and Parliamentary Section
 Strategy and Delivery Division
 Attorney-General's Department
 3-5 National Circuit
 BARTON ACT 2600

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 of receipt.

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.business.gov.au/aba/oaic/foi-review-/>
email: enquiries@oaic.gov.au
post: GPO Box 5218, SYDNEY NSW 2001
in person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

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 department's FOI team at foi@ag.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alexandra Mathews', with a long horizontal flourish extending to the right.

Alexandra Mathews
Assistant Secretary

