



Our reference: FOIREQ17/00052

Mr James Smith

By email to: foi+request-3955-a69a3d5a@righttoknow.org.au

Dear Mr Smith

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 8 August 2017.

You addressed your request to the ACT Privacy Commissioner and sought access 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.

On 9 August 2017, the OAIC acknowledged receipt of your request and advised that under an arrangement between the ACT Government and the Australian government, the Australian Information Commissioner exercises some of the functions of the ACT Information Privacy Commissioner. These responsibilities include handling privacy complaints about ACT public sector agencies.

On receiving your request this office undertook searches for two categories of documents within the scope of your request:

1. Documents potentially held by the OAIC in its role as the ACT Privacy Commissioner responding to privacy complaints, and
2. Documents potentially held by the OAIC in its role as an employer of APS staff.

Decision

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

I have decided to refuse your request under s 24A of the FOI Act on the basis that the documents you seek do not exist.

Reasons for decision

In accordance with s 26 of the FOI Act, this is my statement of reasons.

Material taken into account

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

- your freedom of information request dated 8 August 2017
- the FOI Act, in particular ss 4 and 24A, and
- 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)

The OAIC does not hold the documents you have requested. As a result I am refusing your request for access under s 24A of the FOI Act.

Section 24A(1) 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

On receiving your request this office undertook the following searches to find the documents you requested:

- Staff within the OAIC's Dispute Resolution Branch were asked to search all relevant records to determine whether the OAIC has documents containing the information specified in your freedom of information request. They searched the OAIC's case

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].

management system for documents created in response to an enquiry or privacy complaint from an employee of the ACT government seeking advice, guidance, or opinion about their private social media usage. They have advised that no such documents exist.

- Staff in the Australian Human Rights Commission's Human Resources team (who provide human resources services to the OAIC) were asked to search for documents containing the information specified in your freedom of information request. They advised that they have not been approached by OAIC staff for information, advice, guidance, or opinion on their social media use in a private capacity and therefore no documents exist containing the information specified in your freedom of information request.

I am satisfied that all reasonable steps have been undertaken to locate the documents you have requested and that no such documents exist. I have therefore refused your request for access to the documents you requested under s 24A of the FOI Act.

Yours sincerely

Gillian Cameron
Review and Investigation Officer
FOI Dispute Resolution

24 August 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.