



Australian Government
**Department of Industry,
Innovation and Science**

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Our ref: LEX 59708

Mr James Smith

By email: foi+request-3961-49e542f7@righttoknow.org.au

Dear Mr Smith

Freedom of Information Act 1982 – Notice of Decision

I refer to your correspondence, received by the Department of Industry, Innovation and Science (the department) on 8 August 2017, for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

"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."*

Decision

I am an authorised decision maker under section 23 of the FOI Act.

I have decided to refuse your request under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents you have requested, and I am satisfied that they do not exist.

Reasons for Decision

Evidence/Material on which my findings were based

In reaching my decision, I relied on the following information and documentary evidence:

- the FOI Act;
- your correspondence of 8 August 2017 setting out the particulars of your request;
- the types of documents that fall within the scope of your request;

- consultations with departmental officers as to the nature of the requested documents, and the department's functions and operating environment; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act.

Section 24A – Documents cannot be found or do not exist

Section 24A of the FOI Act relevantly provides:

- (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.*

Searches of departmental records, and inquiries with relevant departmental staff (including the HR and Communications teams) as to their knowledge of the existence of documents relating to your request, did not result in any relevant documents being identified.

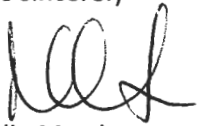
I am satisfied that all reasonable searches have been conducted to locate documents held by the department relevant to your request, but that such documents do not exist. I have therefore decided to refuse your request under section 24A of the FOI Act.

Review rights

If you are dissatisfied with my decision, your review rights are set out in **Attachment B**.

Please do not hesitate to contact the FOI team via e-mail at FOI@industry.gov.au, if you require any further clarification.

Yours sincerely



Natalie Marsh
General Manager
People & Planning Branch

5 September 2017

REVIEW RIGHTS

Application for Internal Review

Section 54 of the FOI Act gives you the option to apply for a departmental internal review of my decision. If you make an application for internal review it will be conducted by an officer of the department (other than me) appointed by the Secretary of the department to conduct a review and make a completely fresh decision on the merits of the case.

Application for a review of the decision must be made within 30 days after the day of receipt of this letter. You do not have to pay any fees or processing charges for an internal review, except for charges relating to the provision of any additional relevant material located as a result of the review (for example photocopying). While a specific form is not required, it would assist the decision maker if your application specifies the grounds on which you consider the decision should be reviewed.

Application for a review of a decision should be addressed to:

FOI Coordinator
Department of Industry
GPO Box 9839
CANBERRA ACT 2601

or by e-mail to: FOI@industry.gov.au.

If the decision on internal review was not satisfactory to you, you would then be entitled to seek review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time the internal decision is notified, should you take that course.

Review by the Australian Information Commissioner

Alternatively, section 54L of the Act gives you the right to apply for review of my decision by the Australian Information Commissioner. An application for review by the Australian Information Commissioner may be made regardless of whether the decision was the subject of a departmental internal review. An application for review by the Australian Information Commissioner must be made within 60 days of receipt of this notice. There is no fee for review by the Australian Information Commissioner.

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

Online: www.oaic.gov.au
Post: GPO Box 2999, Canberra ACT 2601
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of this notice and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Australian Information Commissioner will make a completely independent investigation of your complaint. A complaint to the Australian Information Commissioner must be made in writing and can be lodged online using the Information Commissioner Complaint Application form on the Australian Information Commissioner's website at www.oaic.gov.au