



**Australian Government**  
**Australian Public Service Commission**

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By email: [foi+request-4183-4a98be5a@righttoknow.org.au](mailto:foi+request-4183-4a98be5a@righttoknow.org.au)

Our reference: C17/2066

Dear Applicant,

### **Freedom of Information Request**

I write in response to your email request dated 30 October 2017, seeking access to documents held by the Australian Public Service Commission (the Commission) under the *Freedom of Information Act 1982* (FOI Act), as follows:

*Please regard this email as an FOI application for access to copies of any policy and/or procedures applicable to inquiries into allegations of misconduct by agency heads.*

(your FOI request)

### **My Decision**

This letter sets out my decision on your request for access and provides the reasons for my decision. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

Having taken advice from colleagues within the relevant line area of the Commission, I have determined that no documents exist within the scope of your request.

While not within scope, I take the opportunity to direct to you to the general guidance material as published on our website, which relates to misconduct processes generally.

<http://www.apsc.gov.au/publications-and-media/current-publications/handling-misconduct-a-human-resource-managers-guide-2015>

Inquiries into allegations of misconduct made against agency heads are typically carried out by very senior former public servants, usually former agency heads. These individuals possess a sound, established knowledge of administrative law and its application.

In accordance with procedural fairness, allegations of misconduct against agency heads are considered with regard to the *Public Service Act 1999* and subordinate legislation, in a manner consistent with the principles set out in the Commission's general guidance for handling misconduct inquiries. In short, the Commission does not have a separate, specific policy in relation to conducting inquiries into allegations of misconduct made against agency heads.

In light of the above, I have decided to refuse your request for access 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.

Sections 24A(1)(a) and 24A(1)(b) of the FOI Act provide that an agency may refuse a request for access to a document if the agency is satisfied that all reasonable steps have been taken to find the document and the agency is satisfied that the document does not exist.


### **Review rights**

You are entitled to seek review of this decision. Your rights are set out at **Attachment A** to this letter.

### **Contacts**

If you require clarification of any of the matters discussed in this letter you should contact the Commission's FOI Officer by email at [foi@apsc.gov.au](mailto:foi@apsc.gov.au).

Yours sincerely



Kerren Crosthwaite  
Group Manager, Employment Policy  
Authorised FOI decision maker  
29 November 2017

## REVIEW RIGHTS

If you are dissatisfied with this decision, you have certain rights of review available to you.

### Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you a right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of this decision you must apply for the review, in writing, by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed.

Applications for internal review can be lodged in one of the following ways:

**Email:** [foi@apsc.gov.au](mailto:foi@apsc.gov.au)

**Post:** The FOI Coordinator  
Australian Public Service Commission  
16 Furzer Street  
WODEN ACT 2606

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commission for review of the internal review decision if required.

### Review by the Office of the Australian Information Commissioner

Section 54L of the FOI Act gives you a right to apply directly to the Australian Information Commissioner (the Information Commissioner) for review of certain decisions made under the FOI Act. If you wish to have the decision reviewed by the Information Commissioner you must apply for the review within 60 days of receiving this notice (decision).

The Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website [www.oaic.gov.au](http://www.oaic.gov.au).

To assist the Information Commissioner, your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision. You can also complain to the Information Commissioner about how an agency handled an FOI request, or about other actions the agency took under the FOI Act.

You can contact the Information Commissioner to request a review of a decision or lodge a complaint in one of the following ways:

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

Post: GPO Box 2999  
CANBERRA ACT 2601

**\*Please note:** On 13 May 2014, the Australian Government announced a decision to disband the Office of the Australian Information Commissioner (OAIC). However, the OAIC remains operational until further notice. Information on the OAIC public website advises that Information Commissioner Reviews will continue to be handled by the OAIC and FOI complaints will be referred to the Commonwealth Ombudsman. Please contact the OAIC on the details above if you require further information.

### **The Commonwealth Ombudsman**

You can complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. No particular form is required to make a complaint to the Ombudsman, but the request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the FOI request should be investigated. The Ombudsman may be contacted in one of the following ways:

Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Post: 1300 362 072 (local call charge)