



Our reference: FOIREQ18/00032

Mr Sam Duncan

By email: [foi+request-4494-b7413dc5@righttoknow.org.au](mailto:foi+request-4494-b7413dc5@righttoknow.org.au)

Dear Mr Duncan

## Your Freedom of Information request

I refer to your request for access to documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act), received by the Office of the Australian Information Commissioner (OAIC) on 13 April 2018.

You requested access to:

... the latest documents that include information about complaints received by your office relating to third parties being provided with personal data captured as part of login processes on free public WIFI services. If possible, please treat this as an administrative/informal request. Otherwise please proceed with my request as a formal information request under the Act.

On 16 April 2018, my colleague Raewyn Harlock, wrote to you and asked that you call her to clarify the documents you are seeking.

On the same date, you responded:

1. Often when logging onto a public free WIFI service such as a local council hotspot, public transport free WIFI, public library free WIFI etc. personal information such as email, phone number, gender etc. is often requested as part of the logon process. I'm seeking documents about any individual complaints that a member of the public may have made about the information requested from them as part of this logon process and how that information was captured and potentially used.
2. To narrow the scope down a little any relevant documents for 2017 calendar year would be great.

On 20 April 2018, I wrote to notify you of the timeframes to process your request and to confirm that the scope of your request has been interpreted as:

Privacy complaints received from members of the public about personal information requested as part of the logon process for accessing free wifi in a public place and how that information was captured and potentially used.

On the same date, you confirmed that the scope (above) was correct.

## Decision

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

I have refused your request for documents under s 24A of the FOI Act on the basis that no such documents exist.

## Reasons for decision

### Material taken into account

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

- your freedom of information request dated 13 April 2018
- your clarification of scope dated 20 April 2018
- the FOI Act
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines), in particular [3.85] — [3.94], and
- searches conducted by the Assistant Director of Strategic Communications and Coordination.

### Documents cannot be found or do not exist (s 24A)

I have refused your request for documents under s 24A of the FOI Act on the basis that no documents exist.

Section 24A provides as follows:

#### **Requests may be refused if documents cannot be found, do not exist or have not been received**

##### *Documents 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

...

### ***Searches undertaken***

In order to identify documents within the scope of your request, I consulted the OAIC's Assistant Director of Strategic Communications and Coordination (Assistant Director SCaC),

who managed the OAIC's information and communication systems, and case management systems.

The Assistant Director SCaC conducted searches through the case management system 'Resolve' used by the OAIC to record privacy complaints, using the search term 'wifi' and 'wi-fi'. No privacy complaints relating to Wi-Fi or were found.

Resolve is the only location where complaints, and all documents relating to complaints, are recorded and stored. As such, the searches conducted within Resolve would have identified any documents relevant to your FOI request, if such documents were in the possession of the OAIC.

As such, there are no documents identified as being within the scope of your request.

### **Conclusion**

For the reasons given above I am satisfied that all reasonable steps have been taken to find documents within the scope of your request and that no such documents exist.

Yours sincerely



Shelley Napper  
Review and Investigation Officer  
Dispute Resolution Branch

1 May 2018

## **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, 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](mailto:foi@oaic.gov.au), or by fax on 02 9284 9666.

## Accessing your information

If you would like access to the information that we hold about you, please contact [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). More information is available on the [Access our information](#)<sup>1</sup> page on our website.

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<sup>1</sup> See <https://www.oaic.gov.au/about-us/access-our-information/>.