



ABN 38 113 072 755

Discovery House, Phillip ACT 2606  
PO Box 200, Woden ACT 2606  
Australia

**P** 1300 651 010  
+61 2 6283 2999 (International)  
**F** +61 2 6283 7999  
**E** assist@ipaaustralia.gov.au  
**ipaaustralia.gov.au**

3 December 2013

Mr Brendan Molloy  
Councillor  
Pirate Party Australia

**By email:** foι+request-459-a20eb643@righttoknow.org.au

Dear Mr Molloy

**Request for access to documents under the FOI Act – ALRC Copyright Review and TPP Agreement**

1. I refer to your application for access to documents under the *Freedom of Information Act 1982 (FOI Act)* dated, and received in this office on, 4 November 2013.
2. You requested access to documents relating to:
 

*... any discussion or advice (given or received) regarding the ALRC Copyright Review in the context of the Trans-Pacific Partnership Agreement.*
3. Pursuant to section 24A of the FOI Act, I write to formally refuse your request on the grounds that all reasonable steps have been taken to identify and locate the documents to which you seek access and, on this basis, I am satisfied that the documents do not exist.

*Interpretation of scope*

4. In relation to your request, I have interpreted your reference to the ‘ALRC Copyright Review’ as being to the Australian Law Reform Commission’s Inquiry into Copyright and the Digital Economy (**Inquiry**).
5. For the purposes of the Inquiry, the Australian Law Reform Commission (**ALRC**) released an issues paper on 20 August 2012 and a discussion paper on 5 June 2013. IP Australia made a submission to the issues paper dated 16 November 2012, and a submission to the discussion paper dated 31 July 2013. Both of these submissions are available on the ALRC website at [www.alrc.gov.au/inquiries/copyright-and-digital-economy/submissions-received-alrc#DPorg](http://www.alrc.gov.au/inquiries/copyright-and-digital-economy/submissions-received-alrc#DPorg).

*Sufficiency of search*

6. The Guidelines issued under section 93A of the FOI Act by the Office of the Australian Information Commissioner (**Guidelines**) state, at paragraph 3.54, that:

*Agencies should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and*



*will be influenced by the normal business practices in the agency's environment. At a minimum, an agency or minister should take comprehensive steps to locate a document having regard to:*

- *the subject matter of the documents;*
- *the current and past file management systems and the practice of destruction or removal of documents;*
- *the record management systems in place;*
- *the individuals within the agency who may be able to assist with the location of documents; and*
- *the age of documents.*

7. The following steps were undertaken by IP Australia to identify and locate the documents relevant to your request:

- consultation with relevant officers of the Domestic Policy Section in the Policy and Governance Group, who were responsible for the preparation of IP Australia's submissions to the Inquiry, and familiar with the documents used or created for that purpose; and
- electronic searches of the relevant files and folders for IP Australia's submissions to the Inquiry, using the relevant (existing) electronic records management system.


8. The electronic searches of the relevant files and folders did not produce any results referencing or relating to the Trans-Pacific Partnership Agreement; and relevant officers of the Domestic Policy Section confirmed that there were no discussions or advice (given or received) regarding the Inquiry in the context of the Trans-Pacific Partnership Agreement.

9. On this basis, I am satisfied that there are no documents in the possession of IP Australia relating to any discussion or advice (given or received) on the subject of the Inquiry in the context of the Trans-Pacific Partnership Agreement.

*Review rights*

10. I have attached a notice in respect of review rights for your information (**Attachment A**).

Yours sincerely



Mandy Edlington  
Principal Legal Counsel  
Office of Legal Counsel

## YOUR RIGHTS TO SEEK REVIEW OF A DECISION ON INTERNAL REVIEW MADE UNDER THE FREEDOM OF INFORMATION ACT 1982 (FOI ACT)

If you do not agree with this decision, you may choose to exercise your review rights in the following ways:

- request IP Australia to conduct an internal review of the decision. If you disagree with IP Australia's decision on internal review, you may then apply to the Office of the Australian Information Commissioner (**OAIC**) for a review of that decision; or
- apply directly to the OAIC for a review of the decision. In other words, it is not necessary for an internal review to be conducted first. If you are dissatisfied with the decision of the Australian Information Commissioner (**Commissioner**), you may apply to the Administrative Appeals Tribunal (**AAT**) for a review of that decision.

### Internal review of decision by IP Australia

Pursuant to section 54 of the *Freedom of Information Act 1982 (FOI Act)*, you have the right to apply to IP Australia for an internal review of the decision. The review will be conducted by a different decision maker; and a fresh decision will be made.

If the decision has been made by the Director-General of IP Australia, you do not have the option to request an internal review under the FOI Act. You will need to apply for a review of the decision by the Commissioner (see below).

You do not have to complete a special form in order to request an internal review. However, your application for an internal review must be made in writing, and lodged within 30 days after the day on which you are notified of the decision. It is desirable (but not essential) that you outline the reasons why you are dissatisfied with the decision in your application for internal review. There is no cost attached to an application for internal review.

An application for internal review should be directed by email to [FOI@ipaustalia.gov.au](mailto:FOI@ipaustalia.gov.au).

### Review of decision by the Commissioner

The Commissioner is an independent office holder who is authorised to review decisions of agencies and ministers made under the FOI Act.

You have the right to apply to the Commissioner for review of this decision on internal review. There is no cost associated with making an application for review by the Commissioner.

If you are requesting a review of a decision to refuse access to documents, to impose a charge or to refuse to amend a document, you must make an application in writing to the Commissioner, within 60 days of being notified of the decision.

If you are objecting to a decision to grant access to a document, you must make an application in writing, to the Commissioner, within 30 days of being notified of the decision.

An application for review by the Commissioner can be lodged online, via email, post or in person. An application for review by the Commissioner should be directed to:

Office of the Australian Information Commissioner  
GPO Box 2999  
CANBERRA ACT 2601  
Fax: +61 2 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

Or in person to: Level 3, 175 Pitt Street, SYDNEY NSW 2000.

An application form for a review by the Commissioner is available from the OAIC website ([www.oaic.gov.au](http://www.oaic.gov.au)). Your application should include a copy of the decision to which your application relates. You should also set out the reasons why you disagree with the decision.

After reviewing a decision, the Commissioner must do one of the following:

- set aside the decision and substitute his own decision for that of the decision under review;
- affirm the decision; or
- vary the decision.

Please advise IP Australia if you make an application for review by the Commissioner, preferably by email ([FOI@ipaaustralia.gov.au](mailto:FOI@ipaaustralia.gov.au)).

### **Review of decision by the Administrative Appeals Tribunal (AAT)**

The AAT is an independent body authorised to review certain decisions on their merits and, where the AAT decides it is appropriate, to substitute its own decision for that of the decision under review.

If you are dissatisfied with the decision of the Commissioner, you are entitled to make an application to the AAT for a review of that decision. An application for review must be in writing and lodged within 28 days of being notified of the Commissioner's decision. If you have good reason for not meeting this timeframe, you can write to the AAT and request an extension of time in which to lodge your application. Your request for an extension should set out the reasons why the application was not made within the 28 day period.

Information about making an application to the AAT, and the process for requesting a reduction to the application fee, is available from the AAT's website ([www.aat.gov.au](http://www.aat.gov.au)).

An application to the AAT for a review of the Commissioner's decision should be directed to:

Administrative Appeals Tribunal  
GPO Box 9955  
(in your capital city)

Please advise IP Australia if you make an application for review by the AAT, preferably by email ([FOI@ipaaustralia.gov.au](mailto:FOI@ipaaustralia.gov.au)).

## **Complaints to the Commissioner or Ombudsman**

You can also make a complaint to the Commissioner or the Commonwealth Ombudsman, if you have concerns about action taken by IP Australia in relation to a request under the FOI Act. Any correspondence or enquiries should be directed to:

Office of the Australian Information Commissioner  
GPO Box 2999  
CANBERRA ACT 2601  
Fax: +61 2 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

Commonwealth Ombudsman  
GPO Box 442  
CANBERRA ACT 2601