

ACMA file reference: ACMA2018/65-13

22 June 2018

Mr Goethe-Snape

By e-mail to: [foi+request-4613-6454f0ae@righttoknow.org.au](mailto:foi+request-4613-6454f0ae@righttoknow.org.au)

Dear Mr Goethe-Snape

***Request for access to documents under the Freedom of Information Act 1982***

I refer to your *Freedom of Information Act* (FOI Act) request dated and received on 31 May 2018 in which you sought access to documents concerning the Regional and Small Publishers Innovation Fund (the Innovation Fund):

*Can you please provide the most recent document created listing publishers set to be eligible for the Regional and Small Publishers Innovation Fund. If possible, please include each publisher's name, location, size, audience and annual revenue. If this document does not exist, can you please create one with as many publishers set to eligible as possible.*

I confirm that I am an authorised decision maker within the meaning of section 23 of the FOI Act.

On 13 June 2018 I wrote to you confirming that, in accordance with section 29 of the FOI Act, you may be liable to pay charges. I can confirm that no charges are payable in relation to your current request.

**Material taken into account**

In making my decision, I have had regard to:

- the particular terms of your request;
- the FOI Act; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

**Decision on access and reasons**

Subsection 24A(1) of the FOI Act 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.*

ACMA staff conducted thorough searches to locate the documents that are the subject of your request. My staff conducted an extensive search of the ACMA's file management system using a number of search criteria to identify any documents and/or files related to your request. No such documents were located. I have also considered the ACMA's reporting requirements, and formed the view that there would have been no specific reason to produce a document of the kind sought in your request.

Having regard to the searches undertaken, I am satisfied, in accordance with paragraph 24A(1)(a), that all reasonable steps have been taken to find the documents you have requested and that, for the purposes of paragraph 24A(1)(b)(ii) of the FOI Act, the documents do not exist. I have therefore decided to refuse your request.

The ACMA has not created a list of publishers eligible to apply for the Innovation Fund because doing so would not be appropriate. The ACMA has not sought to pre-empt which publishers and online news content providers may apply for funding, or which of them may be eligible. The ACMA will assess the eligibility and merit of whichever applications are received during the grant application periods for the next three years of the fund. The ACMA may make a grant in respect of a financial year, commencing from 1 July 2018.

In reaching my decision, I had regard to the FOI Guidelines. In particular, I refer to paragraph 2.33 of the Guidelines (available at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-2-scope-of-application-of-the-freedom-of-information-act>), which says:

*The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.*

Please also note that the *Communications Legislation Amendment (Regional and Small Publishers Innovation Fund) Act 2018* received Royal Assent on 19 June 2018 and has commenced in whole, amending the *Broadcasting Services Act 1992* (BSA) by inserting Part 14F – Grants, into the BSA. You are invited to sign up to the ACMA's subscription webpage for further information about the Innovation Fund  
<https://www.acma.gov.au/theACMA/Newsroom/Newsroom/Latest-news/subscribe-to-our-digital-products>.

## Your rights of review

Please find attached the ACMA's Information Sheet entitled *Freedom of Information Act 1982 - Rights of Review of Applicants*.

If you have any questions in this regard please contact me on (02) 9334 7813 or [elizabeth.press@acma.gov.au](mailto:elizabeth.press@acma.gov.au).

Yours sincerely

A handwritten signature in cursive script that reads "Elizabeth Press".

Elizabeth Press

Manager, Regional and Small Publisher Innovation Fund Team

Authorised decision maker pursuant to section 23(1) of the FOI Act

Attached

Information Sheet - *Freedom of Information Act 1982 - Rights of Review of Applicants*

## INFORMATION SHEET

### ***Freedom of Information Act 1982 - Rights of Review of Affected Third Parties***

The purpose of this information sheet is to set out the rights of affected third parties to seek review of decisions made by the ACMA under the *Freedom of Information Act* (FOI Act).

#### **1. Review of decisions**

If you are dissatisfied by any decision made by an ACMA decision maker granting access to documents about which you were consulted under sections 26A, 27 or 27A of the FOI Act you can ask the ACMA to conduct a review of the decision or you may apply to the Australian Information Commissioner (the Information Commissioner) for a review.

##### **1.1 Application for review by the ACMA**

If you want the ACMA to conduct a review of the decision you must write to the ACMA. You should set out why you are dissatisfied with the decision made. The review will be undertaken by a different ACMA decision maker.

##### **Time within which to seek review**

Generally, your request must be made within 30 days of receiving notice of the decision (see section 54B of the FOI Act).

The application may be sent to the ACMA in any of the following ways:

Hand delivery:	Level 5, The Bay Centre, 65 Pirrama Road, Pyrmont, NSW, 2000  Red Building, Benjamin Offices, Chan Street, Belconnen, ACT, 2617  Level 32, Melbourne Central Tower, 360 Elizabeth Street, Melbourne, VIC, 3000
Post:	PO Box Q500, Queen Victoria Building, NSW, 1230  PO Box 78, Belconnen, ACT, 2616  PO Box 13112 Law Courts, Melbourne, VIC, 8010
E-mail:	<a href="mailto:foi@acma.gov.au">foi@acma.gov.au</a>

An application hand delivered or posted to the ACMA should also be marked to the attention of the FOI Co-ordinator.

If, after this review, you remain dissatisfied you may ask the Information Commissioner to conduct a review (see the discussion below).

## **1.2 Application for review by the Information Commissioner**

If you are dissatisfied by a decision made by an ACMA decision maker you may ask the Information Commissioner to conduct a review.

The request for review by the Information Commissioner must be made in writing and you should set out why you are dissatisfied with the decision. You must give details of how notices may be sent to you and include a copy of the relevant decision.

### **Time within which to seek review**

Your request for review should generally be made within 30 days of receiving notice of the decision (see sections 53B and 54S of the FOI Act).

The application may be sent to the Office of the Australian Information Commissioner (the OAIC) in any of the following ways:

Hand delivery:	Level 3, 175 Pitt Street, Sydney, NSW
Post:	PO Box 5218, Sydney, NSW, 2001
Email:	<a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>
On-line:	<a href="http://www.oaic.gov.au">www.oaic.gov.au</a>
Facsimile:	02 9284 9666

## **2. Right to make a complaint**

If you have concerns about any action taken by the ACMA in the performance or exercise of its functions or powers under the FOI Act, you may make a complaint to the Information Commissioner.

You are encouraged by the OAIC to contact the ACMA directly to try to resolve any concerns of that kind before making a complaint to the Information Commissioner.

If you make a complaint, it must be in writing and identify the ACMA as the agency about which you wish to complain.

A complaint may be sent to the Information Commissioner by post, email, online or facsimile (see the details set out above at 1.2).