



Australian Government



Australian  
**Charities** and  
**Not-for-profits**  
Commission

Ref: **2018Q4R8**

4 July 2018

Right to Know.org

BY EMAIL: [foi+request-4631-826f24d9@righttoknow.org.au](mailto:foi+request-4631-826f24d9@righttoknow.org.au)

Dear Sir/Madam

### **Freedom of Information request – Notice of Decision**

1. The purpose of this letter is to provide you a decision about access to documents you requested under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).
2. I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests made to the Australian Charities and Not-for-Profits Commission (**ACNC**).

### **Scope of request**

3. Your email to the ACNC dated 5 June 2018 stated:

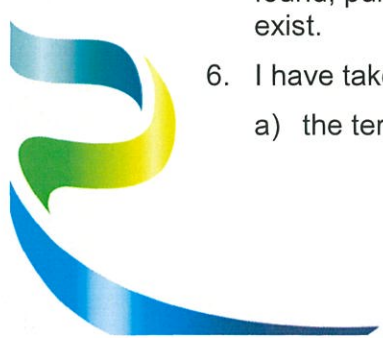
*Under the FOI Act, I seek access to email correspondence between the Commissioner of the ACNC, Dr Gary Johns, and the Australian Public Service Commissioner, Mr John Lloyd (in his capacity as Public Service Commissioner or otherwise), between the period of 1 December 2017 to the date of this application.*

*For the avoidance of any doubt, my request refers to email documents (and any related attachments) sent by Dr Johns to Mr Lloyd, as well as email documents (and any related attachments) sent by Mr Lloyd to Dr Johns (including where Dr Johns has been cc'd).*

4. On 19 June 2018, I formally acknowledged your FOI request by reply email, and noted that the ACNC would endeavour to provide a decision to you by 5 July 2018.

### **Decision on access**

5. I have decided to refuse you access to the documents you seek because I have found, pursuant to sub-paragraph 24A(1)(b)(ii) of the FOI Act, that no documents exist.
6. I have taken the following material into account in making my decision:
  - a) the terms of your FOI request;





- b) the relevant provisions of the FOI Act, in particular sub-paragraph 24A(1)(b)(ii); and
- c) the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**) to which regard must be had for the purposes of performing a function or exercising a power under the FOI Act, in particular Part 3.<sup>1</sup>

### Reasons for decision

- 7. I have interpreted your request as relating to any email correspondence between Dr Gary Johns and Mr John Lloyd, from 1 December 2017 up to and including the date of your FOI request, 5 June 2018.
- 8. I contacted ACNC staff with authorized access to undertake searches to identify relevant documents. On 25 June 2018, I was advised that no relevant documents exist. I am satisfied that no documents exist that are relevant to your request.
- 9. Subsection 24A(1) of the FOI Act provides that (emphasis added):
  - a) *An agency or Minister may **refuse 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.**
- 10. Paragraph 3.80 of the Guidelines states that '[a]n agency or minister may refuse a request if it has taken 'all reasonable steps' to find the document requested, and is satisfied that the document cannot be found or does not exist (s 24A(1)).'
- 11. Paragraph 3.81 of the Guidelines states '[t]he (FOI) Act is silent on what constitutes "all reasonable steps". 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 operating environment.'
- 12. Based on my understanding of the scope of your request, the responses from the only ACNC Directorates likely to hold any relevant documents and my own searches, I am satisfied that I have taken reasonable steps to find the requested documents, and that no such documents exist.

### Review Rights

- 13. In accordance with paragraph 26(1)(c) of the FOI Act, a statement setting out your rights of review under the FOI Act is **enclosed**.

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<sup>1</sup> Australian Information Commissioner, *FOI guidelines* (accessed on 7 December 2017) Office of the Australian Information Commissioner <<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>>



Yours sincerely

**Donna Roussi**

Legal Counsel and FOI Contact Officer  
Australian Charities and Not-for-profits Commission

*Enc: as listed*





## Your review rights

If you are dissatisfied with my decision, you may apply to the ACNC for an internal review or to the Australian Information Commissioner for an external review.

### Internal review

Under section 54 of the FOI Act, you may apply to the ACNC for an internal review of my decision by:

email: [advice@acnc.gov.au](mailto:advice@acnc.gov.au)  
post: Freedom of Information Contact Officer  
Australian Charities and Not-for-profits Commission  
GPO Box 5108, Melbourne VIC 3001

An application for internal review must be made in writing within 30 days of the date of this letter. Where possible, please include reasons why you believe review of the decision is necessary. The internal review decision will be made by another ACNC officer within 30 days of receiving your application for internal review. Please quote **2018Q4R8** when lodging your application.

### Australian Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Australian Information Commissioner must be made in writing within 60 days of the date of this letter by:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 5218, Sydney NSW 2001  
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Australian Information Commissioner review is available on the Office of the Australian Information Commissioner website: [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

## Complaints

Any complaint about the processing of your FOI request can be directed to either the Australian Information Commissioner or the Commonwealth Ombudsman. The complaint should set out the grounds on which you consider the action should be investigated. Complaints can be made in writing, by phone, or by using an online form available from their respective websites.

Australian Information Commissioner contact details:

- [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)
- GPO Box 5218, Sydney NSW 2001
- 1300 363 992
- [https://forms.business.gov.au/aba/landing.htm?formCode=ICCA\\_1](https://forms.business.gov.au/aba/landing.htm?formCode=ICCA_1)

Commonwealth Ombudsman contact details:

- [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)
- GPO Box 442, Canberra ACT 2601
- 1300 362 072
- [www.ombudsman.gov.au/pages/making-a-complaint/](http://www.ombudsman.gov.au/pages/making-a-complaint/)