



Our ref: 19/109

1 March 2019

Via email: Evelyn Doyle [foi+request-5160-49cc33de@righttoknow.org.au](mailto:foi+request-5160-49cc33de@righttoknow.org.au)

Dear Ms Doyle

## YOUR FREEDOM OF INFORMATION REQUEST—NOTICE OF DECISION

I refer to your request under the *Freedom of Information Act 1982* (the FOI Act) which you made in an e-mail sent to the Australian Commission for Law Enforcement Integrity (ACLEI) on the evening of 13 December 2018 and which was accessed the next day. Your request sought access to:

(1) Any documents, correspondence or ministerials (hard copy, emails or other digital messages) between ACLEI and any current or former politician regarding the establishment of a National Integrity Commission to be called the Commonwealth Integrity Commission (CIC) as announced recently by the Prime Minister.

In the media the body has also been referred to as a federal ICAC and documents may refer to it by that name.

(2) Any correspondence relating to the establishment of the CIC as per the above terms between ACLEI and the Attorney-General's department and between ACLEI and the Attorney-General.

(3) Any internal ACLEI documents or emails relating to the establishment of the CIC.

The scope for the request is 2017 to the December 14, 2018.

On 21 February 2019, the Office of the Australian Information Commissioner issued a decision approving extension of time to process your request until 4 March 2019 (Decision at **Attachment A**).

I am a decision-maker authorised by the Integrity Commissioner to make decisions under the *Freedom of Information Act 1982*.

### Relevant material

I have not located any documents which fall into categories (1) and (3) above.

I consider that the only document held by ACLEI that falls within category (2) of your request is a paper submitted by the Integrity Commissioner to the Attorney-General's office of 18 April 2018.

An agency is not required to give access to a document or part of a document that is exempt from disclosure under Division 2 of Part IV of the FOI Act. Exempt documents in Division 2 of Part IV include Cabinet documents (section 34), which are exempt notwithstanding any considerations of the public interest. Accordingly, where a document meets the criteria to establish a particular exemption, it is exempt and the decision-maker is not required to weigh competing public interests to determine if the document should be released.

Section 34 of the FOI Act is designed to protect the confidentiality of the Cabinet process and any document which could reveal Cabinet deliberations or decisions is exempt unless the deliberation or decision has been officially disclosed. Specifically, section 34(1) provides that

- (1) A document is an exempt document if:
  - (a) both of the following are satisfied:
    - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
    - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
  - (b) it is an official record of the Cabinet; or
  - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
  - (d) it is a draft of a document to which paragraph (a) (b) or (c) applies.

As such, the document in question is fully exempt from disclosure pursuant to section 34(1)(ii).

Aside from that document, section 24(1) of the FOI Act permits a request to be refused if documents cannot be found or do not exist. It provides:

**24A Requests may be refused if documents cannot be found, do not exist or have not been received**

Document 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.

I refuse the remainder of your request on the basis that the documents sought do not exist.

## **Charges**

No charges have been imposed for processing this request.

## **Review Rights**

You are entitled to seek review of this decision. **Attachment B** sets out your rights to apply for review if you are dissatisfied with my decision.

## Contacts

If you have any queries about this notice, please do not hesitate to contact ACLEI via email at [foi@aclei.gov.au](mailto:foi@aclei.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to be 'G. N. M.', is written over the text 'Yours sincerely'.

Authorised FOI Decision-Maker



Our reference: RQ19/00618  
Your reference: CM19/109

**Ms Regina Weiss**

Australian Commission for Law Enforcement Integrity  
By email: regina.weiss@aclei.gov.au

**Extension of time under s 15AB**

Dear Ms Weiss

Thank you for your correspondence of 12 February 2019, in which you applied for an extension of time for Australian Commission for Law Enforcement Integrity (ACLEI) to process Ms Evelyn Doyle's request, received 13 December 2018, under the *Freedom of Information Act 1982* (Cth) (the FOI Act). This application is on the basis that the processing period is insufficient to deal adequately with the request, because it is complex.

ACLEI previously obtained agreement under s 15AA of the FOI Act for an extension of time from the applicant.

**Decision**

As a delegate of the Information Commissioner, I am authorised to make decisions on applications for extensions of time under s 15AB of the FOI Act.

I have decided to grant ACLEI an extension of time of 20 days under s 15AB(2) of the FOI Act **to 4 March 2019**. In coming to this decision I have considered factors including your advice that:

- The document within the scope of the request contains sensitive information requiring third party consultation
- ACLEI is experiencing delays as third party consultations have not been finalised.

By granting an extension of time it is anticipated that ACLEI will provide a well-reasoned and better managed decision.



## **Further information**

Further information about how applications to extend the timeframe to process an FOI request are handled by the OAIC can be found published on our website:

[FOI fact sheet 16: Freedom of information — Extensions of time](#)

[FOI agency resource 13: Extension of time for processing requests](#)

Ms Doyle will be notified of this decision.

## **Contact**

If you have any questions about this email, please contact me on (02) 9284 9686 or via email [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). In all correspondence please include OAIC reference number RQ19/00618.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adie Chang', with a stylized, cursive script.

### **Adie Chang**

Assistant Review and Investigation Adviser (Legal)  
Freedom of Information Dispute Resolution

21 February 2019

## **ATTACHMENT B—REVIEW RIGHTS**

You are entitled to seek review of this decision.

### ***Internal Review***

Firstly, under section 54 of the FOI Act, you may apply for an internal review of the decision. Your application must be made by whichever date is the later between:

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

An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned.

An application for a review of the decision should be addressed to:

ACLEI FOI  
Australian Commission for Law Enforcement Integrity  
GPO Box 605  
CANBERRA ACT 2601  
[foi@aclei.gov.au](mailto:foi@aclei.gov.au)

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

### ***External review by the Australian Information Commissioner***

Alternatively, under 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of your receiving this notice.

The Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. You can contact the Office of the Australian Information Commissioner online to request a review of a decision, or by writing to the Information Commissioner at:

GPO Box 2999  
CANBERRA ACT 2601

*More information is available on the Information Commissioner's website—*  
[www.oaic.gov.au](http://www.oaic.gov.au)

### ***Complaints to Ombudsman or Information Commissioner***

You may complain to either the Commonwealth Ombudsman or the Information Commissioner about action taken by ACLEI in relation to your FOI application. The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Commonwealth Ombudsman can be directed to:

Phone: 1300 362 072 (local call charge)  
Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)  
Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

Your enquiries to the Australian Information Commissioner can be directed to:

Phone: 1300 363 992 (local call charge)  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
Website: [www.oaic.gov.au](http://www.oaic.gov.au)

There is no particular form required to make a complaint to the Ombudsman or the Information Commissioner. Your request should set out the grounds on which it is considered that the action taken in relation to the request should be investigated, and identify ACLEI as the relevant agency.