



Australian Government
Department of Defence
Defence Support and Reform Group

Ministerial and Information
Management Branch
Department of Defence

CPI-6-001
PO Box 7910
CANBERRA BC ACT 2610
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FOI@defence.gov.au

Our reference: FOI 295/13/14

Mr Ben Fairless
Right to Know Organisation

By email: foi+request-530-bd167b47@righttoknow.org.au

Dear Mr Fairless

1. I refer to your email of 22 February 2014, in which you sought access, under the *Freedom of Information Act 1982* (FOI Act), to:

“ documents (including, but not limited to, emails, letters or other notes to which the department has access) which reference requests, decisions or opinions by either the minister currently responsible for the Department or any other currently serving federal minister on how the department should handle Freedom of Information (FOI) requests.”

Background

2. Following the receipt of your email of 22 February 2014, your request was registered under the FOI Act. Accordingly, the statutory deadline for you to receive a response to your request expires on 24 March 2014.

3. On 24 February 2014, Mrs M Davidson, Assistant Director Freedom of Information, decided that there are no charges associated with processing your request.

4. The purpose of this letter is to provide you with the decision relating to the documents that are the subject of your request.

FOI decision maker

5. Ms A Sansom, Acting Director Freedom of Information, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on your FOI request.

No documents identified

6. Ms Sansom could not identify any documents that matched the description of the request.

Decision

7. Ms Sansom decided to refuse access to the requested documents, under section 24A [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act, on the grounds that they cannot be found or do not exist.

Material taken into account

8. In making her decision, Ms Sansom had regard to:
- a. the terms of the request;
 - b. relevant provisions in the FOI Act;
 - c. the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act;
 - d. advice received from officers within Office of the Secretary and the Chief of the Defence Force (OSCDF); and
 - e. the advice provided by other departmental officers whose duties relate to the requested documents.

Reasons for decision

Documents not located – Section 24A

9. Section 24A(1) of the FOI Act states:

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.

10. Paragraph 8.41 of the Guidelines also gives guidance as to what is required to be included within this statement of reasons to refuse a request under section 24A(1) of the FOI Act;

8.41 The statement of reasons given to the applicant should sufficiently identify the document and give reasons as to why it cannot be found or why it is known that it no longer exists. The statement should describe the steps the agency took to search for it.

11. Ms Sansom found that despite the conduct of thorough searches for relevant documents, no documents were identified. Ms Sansom advised that the initial search was undertaken by the Directorate of Ministerial and Portfolio Liaison Services (DMPLS), within Ministerial and Executive Coordination and Communication Division, whose function is to coordinate the exchange of correspondence between Defence and the Minister for Defence. Ms Sansom considered that if any relevant documents existed they would be expected to be in the possession of DMPLS.

12. Ms Sansom advised that the DMPLS searches were conducted by using the keywords "FOI" and "Freedom of Information" for the period 7 September 2013 to 22 February 2014, inclusive. Ms Sansom noted that the present Government was elected on 7 September 2013 and your request was received on 22 February 2014. DMPLS advised Ms Sansom that no relevant documents were identified in either the Defence Parliamentary Workflow System (DPAWS), or the overarching Defence electronic records management system; known as "Objective". The only document identified using the search above criteria was recorded as Parliamentary Document Record number QN13-000567, which is a question on notice for clearance. Ms Sansom was satisfied that this document did not match the terms of the request.

13. Ms Sansom also sought advice from OSCDF as to whether the departmental Secretary had received any relevant documents by either the minister currently responsible for the Department or any other currently serving federal minister. Ms Sansom took this course of action because the Secretary is the "principal officer" as described in section 4 of the FOI Act, and is responsible for the conduct of departmental FOI operations. As such, Ms Sansom considered the possibility that the Secretary may have been approached direct in relation to the matters at issue. However, OSCDF advised that this was not the case, and therefore, is not in possession of any relevant documents.

14. Ms Sansom also noted that the Office of the Minister for Defence is a separate agency for purposes of the operation of the FOI Act. As such, it is not appropriate for the Minister for Defence or any other federal ministers to advise the Department of Defence on how it should handle or process FOI requests. That is not to say that the Minister for Defence is not kept informed on how requests are processed and handled when it is appropriate to do so.

15. Based on the above findings, Ms Sansom was satisfied that “all reasonable steps” have been taken to locate the requested documents. Therefore, she was satisfied that the documents cannot be found or do not exist, and refuse the request under section 24A of the FOI Act.

Rights of review

16. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, “Freedom of Information – Your Review Rights”, setting out your rights of review is at Enclosure 1.

Further information

17. The FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2011C00803>.

18. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



John Peterson
Case Officer
Freedom of Information

19 March 2014

Enclosure:

1. Fact Sheet: Freedom of Information – Your Review Rights



Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Defence or the Minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Defence, or external review by the Australian Information Commissioner.

Internal review

If Defence makes an FOI decision that you disagree with, you can ask Defence to review its decision. Generally the review will be conducted by the FOI Directorate, however in some instances it will be referred to the area that made the decision, but it will be conducted by someone at a more senior level. There is **NO** charge for internal review.

You must apply within 30 days of being notified of the decision, unless you have sought an extension from Defence.

Defence **must** make a review decision within 30 days. Where Defence has not met its review obligation, you may then approach the Information Commissioner.

Internal review is not available if the Minister or the principal officer of the agency made the decision personally.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points to which you are objecting and why.

You can lodge your application in one of the following ways:

Post: Freedom of Information Directorate
Department of Defence
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2600

Fax: +61 2 626 62122

Email: FOI.Inquiries@defence.gov.au

External Review

Do I have to go through the Defence's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the Defence internal review process gives Defence the opportunity to reconsider its initial decision and your concerns will most likely be addressed more quickly, without undergoing an external review process.

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the revised FOI Act, you must seek external review through the Information Commissioner prior to applying to the AAT for such a review.

Making a complaint

You may make a complaint to the Information Commissioner about actions taken by Defence in relation to your application. The complaint needs to be in writing.

Contacting the Information Commissioner

Further information about the external review process or how to make a complaint to the Information Commissioner is available at the following:

Online: www.oaic.gov.au

Post: GPO Box 2999, Canberra ACT 2601

Fax: +61 2 9284 9666

Email: enquirixx@xxxx.xxx.au

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate, the complaint, then all relevant documents and information must be transferred to the Information Commissioner.

The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Defence FOI contacts

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