



Australian Government
Department of Education

P Johns

By email: foi+request-5553-a1d418ca@righttoknow.org.au

Dear P Johns

I refer to your request to the Department of Education (the department) on 1 August 2019, through the Right to Know website, in which you requested access under the *Freedom of Information Act 1982* (the FOI Act) to:

"... all documents relating to the Minister being informed of Mr Vale's relationship with Ms Smethurst including sms, messaging service messages (eg whatsapp and others), diary notes, emails or letters.

This includes notifications to AGSVA made by Mr Vale of his relationship."

On 9 August 2019, the department acknowledged your request and advised you that the Right to Know website states as follows:

*"Requests made using Right to Know are **publicly visible** so cannot help you find information about yourself or another identified individual. If you'd like to request personal information you can do so privately by asking the public authority directly ..."*

The department also noted that the Right to Know website indicates that requests for personal information will be removed. If you wished to proceed with your request, you were asked to provide an alternative email address to enable the department to continue corresponding with you.

On 17 August 2019, you advised that you wanted your FOI request to remain on the Right to Know website. You also sought to clarify that the scope of your request was for the following information:

- "1. The time and date Minister Tehan was made aware of the relationship between Mr Byron Vale and Annika Smethurst?*
- 2. The time and date Byron Vale submitted notification to AGSVA of the relationship with Ms Smethurst.*
- 3. Did the Minister or Mr Vale recieve [sic] a briefing or a copy of the document leaked thats [sic] referenced in the article linked in the first request?"*

On 19 August 2019, the department advised you that your revised request was invalid as it was a request for information rather than documents and the department invited you to rephrase your request as a request for documents. The department also noted that ministers and entities such as AGSVA are separate agencies for the purposes of the FOI Act. As you made your request to the department, your request only captures documents in the department's possession. You subsequently advised on the same day that you no longer wished to revise the scope of your request dated 1 August 2019.

I am authorised to make decisions under the FOI Act and my decision regarding your request and the reasons for my decision are set out below.

Decision on access to documents

I have decided to refuse your request pursuant to subparagraph 24A(1)(b)(ii) of the FOI Act on the basis that I am satisfied that the documents you are requesting do not exist within the department.

Reasons for decision

An agency or Minister may refuse a request for access under subsection 24A(1) of the FOI Act 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 have decided to refuse your request pursuant to section 24A of the FOI Act on the basis that all reasonable steps have been taken by relevant departmental officers to find documents falling within the scope of your request and those documents do not exist within the department.

I have consulted with officers in the department in relation to your request and I am advised that matters of the sort covered by your request would generally be between the Minister and his staff member.

Accordingly, I am satisfied that all reasonable searches have been taken within the department to find the documents you requested and that the documents do not exist. Therefore, I have decided to refuse your request pursuant to subparagraph 24A(1)(b)(ii) of the FOI Act. I have enclosed information about your rights of review under the FOI Act at **Attachment A**.

Yours sincerely



Emily
Principal Government Lawyer
Child Care and Corporate Legal Branch

30 August 2019

Attachment A

Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Email: foi@education.gov.au

Post: The FOI Coordinator
Child Care and Corporate Legal Branch
Department of Education
Location code: C50MA10
GPO BOX 9880
CANBERRA ACT 2601

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC, you must apply for the review, in writing or by using the online merits review form available at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC, your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The AIC advises that, before making a complaint to it, you should raise your concerns directly with the relevant agency.

Applications for review or complaint can be lodged in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218 Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.