



14/4215

15 April 2014

Mr Ben Garrett
By email: foi+request-561-66bb74ed@righttoknow.org.au

Dear Mr Garrett

Freedom of Information Request no. FOI14/040

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary

I, Frances Brown, Director, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

On 18 March 2014, you requested access to documents relating to the validity of Australia's sovereign nationhood, specifically:

- “...existing documents formally declaring Australia to be an Independent Sovereign Nation.”

I have identified that the Attorney-General's Department has no documents that fall within the scope of your request.

The only documents in existence which may satisfy your request are the Australian Constitution, or the *Australia Act 1986*, both of which are available publically and online. I did this by consulting Departmental officers in the Office of Constitutional Law who would know about the existence of such documents, and also by conducting a search of the Department's electronic document management system.

I have accordingly decided to refuse your request for access to the documents. More information, including my reasons for my decision, is set out below.

Decision and reasons for decision

With regard to the documents requested in your application, I have found that:

- the documents you requested about Australia's sovereignty do not exist (section 24A(1)(b)(ii)) – information about why they do not exist is given below.

Material taken into account

I have taken the following material into account in making my decision:

- the content of the documents that would fall within the scope of your request
- the FOI Act (specifically sections 24A(1)(b)(ii))
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act

My reasons for refusing access are given below.

Documents non-existent (s 24A(1)(b)(ii))

Your request seeks existing documents formally declaring Australia to be an independent sovereign nation. The Commonwealth Constitution provides the foundation for the formation of the Australian Federation, and as such is one of elements of Australian sovereignty. The preamble to the United Kingdom Act (which is contained within the Constitution) provides that the Australian people have agreed to unite in one indissoluble Federal Commonwealth under the Crown. The Constitution provides authority to the Australian Government, providing sources and limits of power for the Parliament, the Executive and the Judiciary.

The sovereignty of the Commonwealth is also derived from the *Australia Act 1986* (Cth). Both the Australian Parliament and the UK Parliament enacted identical legislation which gave the Australian Parliament the ultimate authority to legislate for the Commonwealth of Australia and its States. It also removed the avenues of appeal to the Privy Council from matters heard in the High Court.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

online: foi@ag.gov.au
post: FOI and Privacy Section
Office of Corporate Counsel,
Attorney-General's Department,
3-5 National Circuit
Barton, ACT 2600

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

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 Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review-/>

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Questions about this decision

If you wish to discuss this decision, please email foi@ag.gov.au.

Yours sincerely



Frances Brown
Director
Freedom of Information and Privacy Section

