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9 December 2019

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Ms Julie Middleton

Sent via email to: foi+request-5863-7c06b551@righttoknow.org.au

Dear Ms Middleton

I refer to your email of 8 November 2019 in which you have requested access, under the *Freedom of Information Act 1982* (Cth), to:

'copies of the following reports produced by:

- 1. Cumpston Sarjeant Pty Ltd, which was commissioned by the Law Council of Australia; and*
- 2. Finity Consulting, which was commissioned by the Insurance Council of Australia.'*

Document publicly available

Your request seeks access to two separate reports, the first being a report by Cumpston Sarjeant Pty Ltd (point 1 of your request). The Cumpston Sarjeant Pty Ltd report is publicly available and can be found on The Parliament of New South Wales website:

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Body/42488/Submission%20-%20-%20attachment%201.pdf>

Decision

In relation to the report by Finity Consulting (point 2 of your request), I have decided to refuse your request, under s.24A(1) of the Act on the basis that the document cannot be found.

I am authorised under s.23 of the Act to make this decision.

Reasons for decision

Section 24A(1) of the Act relevantly provides as follows:

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.

Therefore, we may refuse a request for access to a document if we take all reasonable steps to find that document and we are satisfied that the document cannot be found.

The document in question was created in 2005. At that time, the ACCC's records were predominately kept on hardcopy files. The 2005 ACCC insurance monitoring work was undertaken by the Transport and Prices Oversight branch. This branch no longer exists within the ACCC and former staff who worked directly on the ACCC *5th Public liability and professional indemnity insurance monitoring report* no longer work in the organisation.

The ACCC took the following step to locate the document:

- A thorough search by the relevant line area of our databases, internal ACCC website and external ACCC website to locate any information or documents that relate to your request. This search included attempting to identify where the document may have been located.
- Confirmation from the relevant line area that the branch/team that undertook the public liability insurance work was based in the then ACCC Melbourne office and that no hard copy files which could relate to the document are held in the current ACCC Melbourne office.

Based on the nil results of these steps, I conclude that the requested document cannot be found within the records of the ACCC. It is possible that the document has been lawfully destroyed in accordance with the *Archives Act 1983*.

Although we could not locate a copy of the report, we did locate a summary of the report, which can be found on the Australasian Legal Information Institute website: <http://classic.austlii.edu.au/au/journals/PrecedentAULA/2005/79.html>

We suggest that you may wish to approach Finity Consulting directly, to enquire about a copy of the full report. Contact details can be found on their website: <https://www.finity.com.au/contact-us>.

Rights of review

Your rights of review are set out in Attachment A.

Yours sincerely



Rebecca Fenech
FOI & LSD Compliance Manager
ACCC Legal Group

Sent by email 9/12/2019

ATTACHMENT A

Extract from the Freedom of Information Act

SECT 24 Power to refuse request--diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
 - (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
 - (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

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.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

SECT 24AA When does a practical refusal reason exist?

- (1) For the purposes of section 24, a **practical refusal reason** exists in relation to a request for a document if either (or both) of the following applies:
 - (a) the work involved in processing the request:
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
 - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
 - (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

SECT 24AB What is a request consultation process?

- (1) This section sets out what is a **request consultation process** for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the **contact person**) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;
 - (e) that the period (the **consultation period**) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), **reasonable steps** includes the following:
- (a) giving the applicant a reasonable opportunity to consult with the contact person;
 - (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
- (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
 - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.