



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2020/073

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Brett Wilson

**DECISION BY: Mr Mitchell Johnson
Assistant Secretary
Finance, Property and Security Branch**

By email: foi+request-6261-89aa0b00@righttoknow.org.au

Dear Mr Wilson

On 30 March 2020, you made a request (the **FOI request**) under the *Freedom of Information Act 1982* (the **FOI Act**) to the Department of the Prime Minister and Cabinet (the **Department**) in the following relevant terms:

IAW the FOI Act 1982, It is requested that you provide a complete copy of the Constitution for the following entity:

*Holder(s) details: Holder name: THE DEPARTMENT OF THE PRIME MINISTER AND CABINET Holder type: Other Unincorporated Entity.
ABN: 18 108 001 191*

On 14 April 2020, the Department sought clarification of your request on the basis that:

... it is unclear whether your request is for a copy of a “constitution” within the meaning of “Other Unincorporated Entity”, or “the Constitution” within the meaning of an NCE.

Please provide further clarification on the document you are seeking. Please note that should you wish to make an FOI request, the processing period for your request will commence once the Department receives a valid request that meets the requirements of the FOI Act.

In that correspondence, the Department advised that the ABN LookUp function on the Australian Securities and Investments Commission (ASIC) website shows that the Entity Type for the ABN number in your request is “*Commonwealth Government Entity*”. That correspondence also advised that the Department is a non-corporate Commonwealth Entity

(NCE)¹ that has been established under power that comes from the Constitution, usually through legislation and the exercise of executive power. The online link to the Constitution was also included in that correspondence.

On 22 April 2020, you advised the Department, in part, as follows:

I am seeking a copy of the NCE Constitution that should be held by the Unincorporated Entity named "Prime Minister and Cabinet." The ABN below when one views it on ASIC's web site, does not define or disclose the term: "Non-corporate Commonwealth Entity", it defines it as Holder type: "Other" Unincorporated Entity ABN: 18 108 001 191, Organisational Representative Details: Name: Ida Pedersen.

...

I [sic] summary, I request a copy of the The DEPARTMENT OF THE PRIME MINISTER AND CABINET Constitution, with that office being registered and defined as an Unincorporated Entity with ASIC.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Decision

I have decided to refuse the request under section 24A(1)(b)(ii) of the FOI Act, on the basis that all reasonable steps have been taken to find the document, and I am satisfied that the document does not exist.

Reasons

Section 24A(1) of the FOI Act provides that:

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.

My Branch is responsible for the Department's financial reporting obligations. Having regard to the terms of your request and the documents held by my Branch, I am satisfied that:

- the Department has taken reasonable steps to find the requested document; and
- the requested document does not exist.

As advised by the Department on 14 April 2020 (which has been referenced above), the Department's Entity Type on the official ABN LookUp website is "Commonwealth Government Entity". We have also searched ASIC's database which shows the Department as

¹ Section 11 of the *Public Governance, Performance and Accountability Act 2013* defines non-corporate Commonwealth Entity.

a “Non Registered Entity” (see **attached** search result), which is defined as “An organisation not registered with ASIC”. As this entity type is different to “Other Unincorporated Entity”, there is no document you requested, namely “a *copy of the NCE Constitution that should be held by the Unincorporated Entity named "Prime Minister and Cabinet"*”.

I have therefore decided to refuse the FOI request under section 24A(1)(b)(ii) of the FOI Act.

Processing and access charges

I have decided not to impose processing charges in respect of the FOI request.

Review rights

Information about your rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department’s actions in relation to a request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department’s decision.

Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

Yours sincerely



Mitchell Johnson
Assistant Secretary
Finance, Property and Security Branch

22 May 2020