



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2020/073/IR

INTERNAL REVIEW DECISION AND REASONS
UNDER SECTION 54 OF
THE FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Brett Wilson

DECISION BY: Paul Wood
Chief Financial Officer
Corporate Division

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

Dear Mr Wilson

I refer to your request, dated 27 May 2020, seeking internal review of the decision (the **primary decision**) made on 22 May 2020 by Mr Mitchell Johnson, Assistant Secretary, Finance, Property and Security Branch, Department of the Prime Minister and Cabinet (the **Department**) in relation to your request, originally made on 30 March 2020 and clarified on 22 April 2020, for access under the *Freedom of Information Act 1982* (the **FOI Act**) in the following terms:

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 DEPARTMENT OF THE PRIME MINISTER AND CABINET Constitution, with that office being registered and defined as an Unincorporated Entity with ASIC.

The primary decision refused the request under section 24A(1)(b(ii)) of the FOI Act, on the basis that all reasonable steps had been taken to find the document, and that the document does not exist.

Under section 54(2) of the FOI Act, an applicant is entitled to apply for an internal review of a decision refusing to give access to a document in accordance with a request.

In your request for internal review, you submitted that:

Thank you for your FOI Response. There seems to be some confusion and I am requesting some further clarification. This follow up request is now a Request for Internal Review.

*I brought to your attention the following entity that it is recorded with ASIC that the holder of ABN: 18 108 001 191 Holder(s) details: Holder name: THE DEPARTMENT OF THE PRIME MINISTER AND CABINET is defined as Holder type: Other Unincorporated Entity
ABN: 18 108 001 191*

Organisational Representative Details: Name: Ida Pedersen Start date: 14/01/2014.

The above has defined THE DEPARTMENT OF THE PRIME MINISTER AND CABINET as an "Other Unincorporated Entity" and not as a Non Registered Entity. Can you provide further clarification and information or a document that was submitted to ASIC registering THE DEPARTMENT OF THE PRIME MINISTER AND CABINET on the ASIC data base, as a Non Registered Entity which is in direct conflict with the Holder Type as listed against ABN: 18 108 001 191 being a Other Unincorporated Entity.

According to the ATO, "an unincorporated entity It is a group of people who agree to act together as an organisation and form an association." I am of the assumption that this is how the Department of PM and Cabinet operates? Can you confirm this assumption? The ATO goes on to say "The group can remain informal and its members make their own rules on how the group is managed. The rules may also be referred to as a constitution." Please note, this is the type of constitution of which I was referring too in my FOI request of which I was seeking a copy from your office where you have suggested in your response that it does not exist.

Because the department of PM and Cabinet is not recognised in the Commonwealth Constitution, as confirmed by the 1988 Constitutional Commission, it seems feasible that the Department of PM and Cabinet should have its own Constitution that might empower its committee members to do a certain thing?

The ATO goes on to say, "An unincorporated association is however an entity under tax law and treated as a company for income tax purposes."

<https://www.ato.gov.au/Non-profit/Getting-started/In-detail/Registration/Overview-of-legal-structures/>

Authorised decision maker

Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the original decision) to review the decision.

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

Internal review decision

I have decided to affirm the primary decision.

In reaching my decision I have had regard to:

- the terms of your request;
- the primary decision;
- your request for internal review of 27 May 2020;
- correspondence between yourself and the Department in relation to this request;
- the FOI Act;
- the 'Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*'¹ (the **FOI Guidelines**).

Reasons

I am satisfied with the primary decision-maker's finding that the requested document does not exist.

On 11 June 2020, the Department wrote to you to advise that it appears that the particular ASIC record you are referring to, is the Business Name "Aboriginal and Torres Strait Island Land Account", which is in the following ASIC link:

https://connectonline.asic.gov.au/RegistrySearch/faces/landing/bySearchId.jspx?searchId=167542056&searchIdType=BUSN&_adf.ctrl-state=7eflarifb_4. The Department advised in that correspondence that responsibility for Land Councils has been transferred to the National Indigenous Australians Agency (NIAA), which is a separate executive agency established on 1 July 2019. On that basis, the Department asked that you may wish to refer your request to the NIAA.

You responded on 14 June 2020 to the Department's email , including as follows:

'In summary, I merely seek a copy of the following document as a matter of public interest:

1. *A copy of the written Constitution for the unincorporated organisation or association named "Department of Prime Minister and Cabinet" acting as an unincorporated organisation or association, and defined by ASIC being the holder of ABN: 18 108 001 191 and Holder type "Other Unincorporated Entity."*

I have reviewed all the relevant material and I confirm that the document you are requesting does not exist. I am satisfied that the primary decision remains the correct and preferable decision, and I agree with the primary decision-maker's findings and the reasons underpinning those findings. Accordingly, I adopt and affirm those findings and reasons as my own for the purposes of this internal review.

¹ FOI Guidelines combined November 2019 published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

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/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this 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/>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Wood', with a long horizontal line extending from the bottom of the signature.

Paul Wood
Chief Financial Officer
Corporate Division
26 June 2020