



7 July 2014

Mr Brendan Molloy
Councillor
Pirate Party Australia

By email: foi+request-644-3d907ac3@righttoknow.org.au

Dear Mr Molloy

Notice of decision under the *Freedom of Information Act 1982*

I refer to your application under the *Freedom of Information Act 1982 (FOI Act)*, dated 11 June 2014, seeking access to “documents, including advice, that contributed to the development of the view that the implementation of the Korea-Australia Free Trade Agreement would require amendments to the Copyright Act 1968 as per paragraph 17 of the National Interest Analysis”.

I am an officer of IP Australia authorised under section 23 of the FOI Act to make decisions on access. I declare that I have no conflict of interest that would prevent me from making a decision in relation to your application.

Decision

I am writing to advise that all reasonable steps have been taken to identify and locate the documents to which you seek access. On this basis, I am satisfied that the documents you have requested do not exist in the possession of IP Australia. Consequently, I am formally refusing your request for access under section 24A of the FOI Act.

I did not seek to transfer your request to the Attorney-General’s Department or the Department of Foreign Affairs and Trade, in accordance with section 16 of the FOI Act. While those agencies may have a closer relationship to the subject matter of your request, I am aware that you have already submitted applications in the same terms to those agencies.

Sufficiency of search

The Guidelines issued under section 93A of the FOI Act by the Office of the Australian Information Commissioner (**Guidelines**) relevantly state, at paragraph 3.54, that:

What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency’s environment. At a minimum, an agency or minister should take comprehensive steps to locate a document having regard to:

- *the subject matter of the documents;*

- *the current and past file management systems and the practice of destruction or removal of documents;*
- *the record management systems in place;*
- *the individuals within the agency who may be able to assist with the location of documents; and*
- *the age of documents.*

The following steps were undertaken by IP Australia to identify and locate documents relevant to your request:

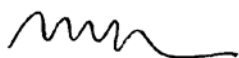
- consultation with relevant officers of the International Policy, Strategic Projects, and Domestic Policy and Legislation sections of IP Australia, who have had involvement with the Korea-Australia Free Trade Agreement (**KAFTA**);
- electronic searches of relevant files and folders, using IP Australia's electronic records management system, Objective;
- electronic searches of relevant files and folders, on shared document drives; and
- electronic searches of personal drives and email accounts of relevant officers.

I have relied on the consultation and electronic searches outlined above to identify no documents in IP Australia's possession that contributed to the development of the view that the implementation of KAFTA would require amendment to the *Copyright Act 1968*, as referenced in paragraph 17 of the National Interest Analysis [2014] ATNIA 8 (with attachments). Accordingly, I have concluded that there are no documents in the possession of IP Australia relating to your request.

Review rights

A notice in respect of review rights is attached for your information (**Attachment A**).

Yours sincerely



Mandy Edlington
Principal Legal Counsel
Office of Legal Counsel

**YOUR RIGHTS TO SEEK REVIEW OF A DECISION ON INTERNAL REVIEW MADE UNDER
THE FREEDOM OF INFORMATION ACT 1982 (FOI ACT)**

If you do not agree with this decision, you may choose to exercise your review rights in the following ways:

- request IP Australia to conduct an internal review of the decision. If you disagree with IP Australia's decision on internal review, you may then apply to the Office of the Australian Information Commissioner (**OAIC**) for a review of that decision; or
- apply directly to the OAIC for a review of the decision. In other words, it is not necessary for an internal review to be conducted first. If you are dissatisfied with the decision of the Australian Information Commissioner (**Commissioner**), you may apply to the Administrative Appeals Tribunal for a review of that decision.

Internal review of decision by IP Australia

Pursuant to section 54 of the *Freedom of Information Act 1982 (FOI Act)*, you have the right to apply to IP Australia for an internal review of the decision. The review will be conducted by a different decision maker; and a fresh decision will be made.

You do not have to complete a special form in order to request an internal review. However, your application for an internal review must be made in writing, and lodged within 30 days after the day on which you are notified of the decision. It is desirable (but not essential) that you outline the reasons why you are dissatisfied with the decision in your application for internal review. There is no cost attached to an application for internal review.

An application for internal review should be directed by email to: FOI@ipaustralia.gov.au.

Review of decision by the Commissioner

The Commissioner is an independent office holder who is authorised to review decisions of agencies and ministers made under the FOI Act.

You have the right to apply to the Commissioner for review of this decision on internal review. There is no cost associated with making an application for review by the Commissioner.

If you are requesting a review of a decision to refuse access to documents, to impose a charge or to refuse to amend a document, you must make an application in writing to the Commissioner, within 60 days of being notified of the decision.

If you are objecting to a decision to grant access to a document, you must make an application in writing, to the Commissioner, within 30 days of being notified of the decision.

An application for review by the Commissioner can be lodged online, via email, post or in person.
An application for review by the Commissioner should be directed to:

Office of the Australian Information Commissioner
GPO Box 2999
CANBERRA ACT 2601
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

Or in person to: Level 3, 175 Pitt Street, SYDNEY NSW 2000.

An application form for a review by the Commissioner is available from the OAIC website (www.oaic.gov.au). Your application should include a copy of the decision to which your application relates. You should also set out the reasons why you disagree with the decision.

After reviewing a decision, the Commissioner must do one of the following:

- set aside the decision and substitute his own decision for that of the decision under review;
- affirm the decision; or
- vary the decision.

Please advise IP Australia if you make an application for review by the Commissioner, preferably by email (FOI@ipaustalia.gov.au).

Review of decision by the Administrative Appeals Tribunal (AAT)

The AAT is an independent body authorised to review certain decisions on their merits and, where the AAT decides it is appropriate, to substitute its own decision for that of the decision under review.

If you are dissatisfied with the decision of the Commissioner, you are entitled to make an application to the AAT for a review of that decision. An application for review must be in writing and lodged within 28 days of being notified of the Commissioner's decision. If you have good reason for not meeting this timeframe, you can write to the AAT and request an extension of time in which to lodge your application. Your request for an extension should set out the reasons why the application was not made within the 28 day period.

Information about making an application to the AAT, and the process for requesting a reduction to the application fee, is available from the AAT's website (www.aat.gov.au).

An application to the AAT for a review of the Commissioner's decision should be directed to:

Administrative Appeals Tribunal
GPO Box 9955
(in your capital city)

Please advise IP Australia if you make an application for review by the AAT, preferably by email (FOI@ipaustalia.gov.au).

Complaints to the Commissioner or Ombudsman

You can also make a complaint to the Commissioner or the Commonwealth Ombudsman, if you have concerns about action taken by IP Australia in relation to a request under the FOI Act. Any correspondence or enquiries should be directed to:

Office of the Australian Information Commissioner
GPO Box 2999
CANBERRA ACT 2601
Email: enquiries@oaic.gov.au

Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601
Email: ombudsman@ombudsman.gov.au