



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2020/214IR

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

REQUEST BY: Trav S

DECISION BY: Mr John Reid PSM
First Assistant Secretary
Government Division

By email: foi+request-6704-795fb831@righttoknow.org.au

Dear Trav S

I refer to your email of 16 October 2020 in which you requested internal review of the decision (the **primary decision**) dated 12 October 2020 by Mr Peter Rush, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**).

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.

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 to refuse your request under section 24A(1)(b)(ii) of the FOI Act.

In reaching my decision I have had regard to:

- your FOI request of 11 September 2020;
- the primary decision;
- your email of 12 October 2020;
- your request for internal review;
- the FOI Act;

- the ‘*Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act*’ (the **FOI Guidelines**).

Background

The FOI request

On 11 September 2020, you made a request under the FOI Act to the Department in the following terms:

Please provide the requested information administratively, but if this is not reasonably possible consider it a request for information under the FOI Act.

I seek a copy of the handbook, manual or work instruction governing the drafting/production of declarations or amendments to the Humanitarian Overseas Service Medal.

Please don't provide the medal's Letters Patent or governing regulations in this request.

The primary decision

On 12 October 2020, the Department notified you of the primary decision on your FOI request. Your FOI request was refused under section 24A(1)(b)(ii) of the FOI Act for the following 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.*

The drafting/production of declarations or amendments to the Humanitarian Overseas Service Medal (HOSM) are undertaken by the Office of Parliamentary Counsel (OPC) based on instructions from the Department of the Prime Minister and Cabinet as the agency with policy responsibility for the HOSM.

Noting the division of responsibility between the Department and OPC described above, and having regard to where documents relevant to the request might be held, if they exist, the Department undertook relevant searches, but no documents meeting the request have been found.

I am satisfied that all reasonable steps have been taken to find documents meeting the terms of your request and that no such documents exist in the Department.

Your email of 12 October 2020

On 12 October 2020, you wrote to the Department in the following terms:

Thank you for taking a look for me.

The drafting/production of declarations or amendments to the HOSM are undertaken by the OPC based on instructions from the Department of the Prime Minister and Cabinet as the agency with policy responsibility for the HOSM.

I would be grateful for a clarification, would either documents come under my original FOI request?

- 1. The Department of Prime Minister and Cabinet Legislation Handbook (2017)*
- 2. OPC's drafting services: a guide for clients (2016)*

The internal review request

On 16 October 2020, you requested internal review in the following terms:

I am writing to request an internal review of Department of the Prime Minister and Cabinet's handling of my FOI request 'Seeking the manual, handbook or work instruction governing the drafting/production of declarations or amendments to the Humanitarian Overseas Service Medal'.

The HOSM is governed by legislation. The Department responsible for HOSM administration instructed OPC to draft an amendment to the 2004 HOSM (Iraq) declaration to extend the Medal to specified commercial contractors. Agency staff instructing OPC on the drafting of bills and instruments have roles and responsibilities when producing such instructions. It appears reasonable and in the public interest to disclose the documents guiding staff producing instructions to OPC regarding amendments to HOSM declarations.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://www.righttoknow.org.au/request/seeking_the_manual_handbook_or_w

Reasons

I am agree with the primary decision findings and reasons for decision and I adopt those findings and reasons as my own for the purposes of this internal review.

Noting your email of 12 October 2020, I have considered whether the following documents are within the scope of your FOI request:

- *The Legislation Handbook*¹
- *OPC's drafting services: a guide for clients*²

¹ Department of the Prime Minister and Cabinet, *Legislation Handbook*, February 2017, <https://www.pmc.gov.au/resource-centre/government/legislation-handbook>.

² Office of Parliamentary Counsel, *OPC's drafting services: a guide for clients*, sixth edition, July 2016, <https://www.pmc.gov.au/resource-centre/government/legislation-handbook>.

I do not consider either of these documents to be within the scope of your FOI request, as neither is a document 'governing the drafting/production of declarations or amendments to the Humanitarian Overseas Service Medal.'

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 this decision. 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

A handwritten signature in blue ink that reads "John Reid". The signature is written in a cursive, flowing style.

John Reid PSM
First Assistant Secretary
Government Division

12 November 2020