



## OFFICE OF THE PRIME MINISTER

Reference: FOI/PMO/2020/052

Alfie

By email: [Foi+request-6820-07c1a2fd@righttoknow.org.au](mailto:Foi+request-6820-07c1a2fd@righttoknow.org.au)

Dear Alfie

I refer to your request, dated 21 October 2020, made to the Office of the Prime Minister under the *Freedom of Information Act 1982* (Cth) (the **FOI Act**) in the following terms:

*In the past 30 days from this request, I would like a record of each day the Prime Minister used, and did not use, the COVIDSafe app for more than 1 hour, more than 2 hours, and more than 4 hours, after leaving home.*

I write to provide you with the decision on your purported request.

### ***Authorised decision-maker***

I am authorised to make a decision in this matter on the Prime Minister's behalf.

### ***Decision***

I have decided that the requested documents, if they exist, are not official documents of a minister as defined under section 4(1) of the FOI Act. Accordingly, there is no right of access under the FOI Act to the requested documents.

### ***Official documents of a Minister***

Section 11(1)(b) of the FOI Act provides that, subject to that Act, a person has a right to obtain access, in accordance with that Act, to 'an official document of a Minister, other than an exempt document'.

Section 4 of the FOI Act defines:

- '*official document of a Minister or official document of the Minister*' to mean a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document that relates to the affairs of an agency or of a Department of State and, for

the purposes of this definition, a Minister shall be deemed to be in possession of a document that has passed from his or her possession if he or she is entitled to access to the document and the document is not a document of an agency.

- 'exempt document' to mean, among other things, 'an official document of a Minister that contains some matter that does not relate to the affairs of an agency or of a Department of State'.

Paragraph 2.50 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**) provides that documents held by a Minister that do not 'relate to the affairs of an agency' include:

- personal documents of a minister or the minister's staff
- documents of a party political nature, and
- documents held in the minister's capacity as a local member of parliament not dealing with the minister's portfolio responsibility.

Section 15 of the FOI Act permits 'a person who wishes to obtain access to a document of an agency or an official document of a Minister' to make a request for such access.

Based on the terms of your request, I am satisfied that you are not 'a person who wishes to obtain access to a document of an agency or an official document of a Minister'; your purported request relates to documents that, if they existed, would not fall within the meaning of 'an official document of a Minister', as they would not relate to the affairs of an agency or of a Department of State.

On this basis, I am satisfied that your request falls outside the scope of the FOI Act.

### ***Review rights***

Information about your rights of review can be found on the website of the Office of the Australian Information Commissioner at: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>

Yours sincerely



John Harris  
Senior Adviser

20 November 2020