



Australian Government
Attorney-General's Department

Our ref: FOI20/226; CM20/10020

11 January 2021

Ms Elle Jay

By email: foi+request-6971-8de4d063@righttoknow.org.au

Dear Ms Jay

Freedom of Information Request FOI20/226 – Decision Letter

The purpose of this letter is to give you a decision about your request for access to documents which you submitted to the Attorney-General's Department (the department) under the *Freedom of Information Act 1982* (the FOI Act).

Your Request

On 10 December 2020, you requested access to:

1. *the instrument, traceable back to The Commonwealth of Australia Constitution Act 1901 (UK), that authorizes the Minister to appoint a person to act in the office of Commissioner of Taxation; and*
2. *the instrument, traceable back to The Commonwealth of Australia Constitution Act 1901 (UK), that authorizes the Minister to appoint a person to act in the office of Deputy Commissioner of Taxation.*

The department acknowledged your request on 14 December 2020.

A decision in relation to your request is due on 11 January 2021.

My Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

In making my decision, I have taken the following into account:

- the terms of your request;
- advice provided to me by officers with responsibility for matters to which your request relates;
- the provisions of the FOI Act; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Section 24A of the FOI Act relevantly provides that an agency or Minister may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document:

- is in the agency's possession but cannot be found; or
- does not exist.

When considering a decision to refuse access under section 24A of the FOI Act, the Guidelines relevantly provide at [3.89] that an agency or minister should take comprehensive steps to locate documents, 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 an agency or minister's office who may be able to assist with the location of documents; and
- the age of the documents.

To identify the documents for your request, departmental staff responsible for FOI matters searched departmental recordkeeping systems. The electronic holdings in these systems were interrogated via use of particular search terms developed with reference to the scope of your request.

Having regard to the above, I am satisfied that reasonable steps to locate the documents to which you have sought access were undertaken. I am also satisfied that the documents do not exist within the department's records holdings. I have therefore decided to refuse access pursuant to section 24A of the FOI Act.

Additional Information

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

If you wish to discuss this decision, you can contact the FOI case officer for this matter, Euphrasia, on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Joanna Baker
A/g Director
Freedom of Information and Privacy Section

Attachments

Attachment A: Review Rights



Attachment A - FOI Review rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter, and be lodged in one of the following ways:

email: foi@ag.gov.au

post: Freedom of Information and Privacy Section
Strategy and Governance Branch
Attorney-General's Department
3-5 National Circuit BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of the decision letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.