



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

Our ref: PRJ1004830
Contact officer: FOI Team
Contact phone: 02 6243 1244

tel: (02) 6243 1111
fax: (02) 6243 1199

1 March 2021

www.accc.gov.au

JS

Sent via email: foi+request-7039-219@accc.gov.au

Dear JS

Access refusal – documents do not exist

I refer to your email dated 28 January 2021 in which you have requested access, under the *Freedom of Information Act 1982* (Cth) (**Act**), to:

- (a) *copies of policies and procedures used by the ACCC to assess and determine 'public outrage';*
- (b) *documents containing the material relied on by the ACCC to determine the public outrage against News Corp was disproportionate;*
- (c) *documents containing the material relied on by the ACCC to assert that Google have managed to convince people News Corps are the big, bad guy.'*

Decision

I have decided to refuse your request under section 24A(1) of the Act on the basis that the documents do not exist.

I am authorised under section 23 of the Act to make this decision.

Reasons for decision

Section 24A(1) of the Act relevantly provides as follows:

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.**

Therefore, we may refuse a request for access to a document if we take all reasonable steps to find that document and we are satisfied that the document does not exist.

Your application refers to comments attributed to the Chair of the ACCC, Mr Rod Sims, in an article that appeared in the Australian Financial Review on 14 January 2021 titled 'ACCC goes into battle against Facebook, Apple and Google'. With reference to particular comments attributed to Mr Sims in that article, your application requests the policies, procedures and documents that were used or relied upon by the ACCC in an assessment and determination by the ACCC of a level of 'public outrage' and disproportionality in respect of that public outrage.

The particular comments that you have referred to in your application are in the nature of an observation. The basis of the observation is stated in the AFR article and the extracts that are referred to in your application, and it is further informed by the context of the broader article itself. The particular comments draw a comparison between what is observed to be the level of 'public outrage' toward one company (ie. News Corp) relative to the sentiment toward companies that are much larger (ie. the digital platforms referred to in the article).

The ACCC's role in relation to digital platforms includes undertaking inquiries in relation to digital platform markets. More information about those inquiries may be found on the ACCC's website. The particular comments from the AFR article that you have referred to in your application were not directed at the right to petition the Federal Parliament, and there is no ACCC 'assessment' of 'public outrage' against a particular entity.

The ACCC took the following steps to locate the documents that you have requested:

- A thorough search of our databases to locate any information or documents that relate to your request;
- Confirmation with relevant ACCC staff that no such document exists;
- A thorough search by the relevant ACCC branch for documents matching, or similar to, the scope of the request provided by you.

Based on the nil results of these steps, I conclude that the requested document does not exist within the records of the ACCC.

Rights of review

Your rights of review are set out in Attachment A.

Yours sincerely



Melissa McDonnell
a/g Principal Lawyer
ACCC Legal Group

Sent by email 1/03/2021

ATTACHMENT A

INFORMATION ON RIGHTS OF REVIEW

1. ACCC Internal Review

Under s.54 of the FOI Act, you can apply for an internal review of my decision by writing to the ACCC within 30 days of receipt of this letter indicating that you seek an internal review of this decision.

If you make an application for review, another officer of the ACCC will review and make another decision in regards to these documents.

There is no charge payable for requesting an internal review. No particular form is required to apply for review. You will need to set why the decision should be changed.

Please send any correspondence to:

FOI Team

Australian Competition & Consumer Commission

GPO Box 3131

Canberra ACT 2601

Email: foi@accc.gov.au

If you make an application for internal review and we do not make a decision within 30 days or such further period as the IC allows, the original decision is considered affirmed. In such circumstances, you can seek review of our deemed decision by the IC.

2. Review by the Information Commissioner

You may ask for a review of a decision by the Australian Information Commissioner (IC). You do not have to go through our internal review process first for this process. If you do choose to seek an internal review, you can still seek IC review for the internal review decision if we refuse access to the documents.

You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

If you disagree with the Information Commissioner's review decision, you can appeal to the Administrative Appeals Tribunal (AAT).

The Tribunal is a completely independent review body with the power to make a fresh decision. A filing fee of \$920.00 (as at 1 July 2018) should accompany your application, unless you are granted legal aid or you come within an exempt category of persons (check with the Tribunal registry in your State). The Registrar or Deputy Registrar may waive the fee on the ground that its payment would impose financial hardship on you. The fee may be refunded if you are successful.

3. Complaint to the Information Commissioner

You may request the Information Commissioner to investigate action taken by the ACCC in relation to this Freedom of Information request. There is no fee for making a complaint. The Information Commissioner will consider your complaint and, if appropriate, conduct an investigation into it. Any investigation will be completely independent.

You must lodge your complaint in writing and do so in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au
