



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2021/027

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Tyson Smith

**DECISION BY: Mr Peter Rush
Assistant Secretary
Parliamentary and Government Branch**

By email: foi+request-7109-c41617bf@righttoknow.org.au

Dear Mr Smith

I refer to your email of 25 February 2021 in which you made a request (the **FOI request**) under the *Freedom of Information Act 1982* (the **FOI Act**) to the Department of the Prime Minister and Cabinet (the **Department**) in the following terms:

I am seeking access to any document(s) that indicates the date and time in which the Gaetjens review was designated as 'for deliberation of Cabinet'.

On 26 February 2021, the Department wrote to you to advise that your request did not meet the requirements of a valid request under section 15 of the FOI Act, on the basis that it did not provide such information concerning the document as is reasonably necessary to enable a responsible officer of the Department to identify it, as it was unclear what “Gaetjens review” the request referred to.

On 1 March 2021, you provided the following clarification:

In relations to “Gaetjens review” what I mean is the report that Scott Morrison announced would be conducted by Phil Gaetjens which seeks to investigate which staff in the Prime Minister's Office (PMO) were aware of the assault allegation in relation to Brittany Higgins.

Accordingly, your request, as clarified, is as follows:

I am seeking access to any document(s) that indicates the date and time in which the report that Scott Morrison announced would be conducted by Phil Gaetjens, which seeks to investigate which staff in the Prime Minister's Office (PMO) were aware of the assault allegation in relation to Brittany Higgins, was designated as 'for deliberation of Cabinet'.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Decision

I have decided to refuse your request under section 24A(1)(b)(ii) of the FOI Act, on the basis that the Department has taken all reasonable steps to locate the documents you have requested, and those documents do not exist.

In making this decision, I have had regard to the following material:

- the terms of your request;
- the advice from the Department's business area responsible for the subject matter of the FOI request;
- the FOI Act; and
- the 'Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*' (the **FOI Guidelines**).

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.*

Having regard to the terms of the FOI request, I sought advice from the relevant officials within the Department responsible for the subject matter of the request as to whether documents meeting those terms exist. I confirm no documents meeting the terms of the FOI request exist.

I am satisfied that all reasonable steps have been taken to find documents relevant to the request, and that the requested documents do not exist. I have therefore decided to refuse your request under section 24A(1)(b)(ii) of the FOI Act.

Processing and access charges

I have decided not to impose processing charges in respect of your request.

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/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to a request. 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 black ink, appearing to read 'Peter Rush', written in a cursive style.

Peter Rush
Assistant Secretary
Parliamentary and Government Branch
8 April 2021