

13 September 2021

Scott Chapman

Sent by email to: foi+request-7581-0f507533@righttoknow.org.au

ACMA file reference: ACMA2021/376

Dear Scott

Request for internal review made under section 54B of the Freedom of Information Act 1982 (the FOI Act) – Notice of Decision and Statement of Reasons

1. I refer to your email to the Australian Communications and Media Authority (the ACMA) received on 16 August 2021, in which you made an application for internal review of the FOI decision made on 12 August 2021, under section 54B of the *Freedom of Information Act 1982* (FOI Act).

Authority

2. I am authorised to conduct the internal review pursuant to section 54C of the FOI Act. I am the Executive Manager of the Licensing & Infrastructure Safeguards Branch, in the ACMA's Communications Infrastructure Division.

Scope of internal review decision

3. Please note that the scope of the internal review is limited to your FOI request of 13 July 2021, and the subsequent decision on access to documents made on 12 August 2021.
4. Accordingly, my decision does not relate to any of the other matters raised in your email to the ACMA received on 16 August 2021 which are outside of the scope of this review. However, I will provide some comment on those matters with a view to assisting you to resolve your request for information.

Background

5. On 13 July 2021, you made a request for access to documents under the FOI Act to the ACMA.
6. On 21 July 2021, ACMA staff wrote to you to clarify that the scope of your request was as follows:

“the document(s) that the ACMA issued to [Vodafone, Telstra and Optus], to correct the performance and conduct issues of the offending participants in the industry... [in reference to] the non-compliance issue brought to the ACMA's attention on 7 June 2021.”

7. That correspondence also noted that the ACMA understood that the issues raised on 7 June 2021 were raised by you.
8. On 21 July 2021, by return email to the ACMA, you stated “...you are correct with your recorded preliminary investigation comments”. The decision-maker considered that your email confirmed that the scope of your request as represented by the ACMA correspondence of 21 July 2021 was correct.
9. On 12 August 2021, the decision-maker wrote to you to advise the decision on your FOI request. That decision was to “refuse your FOI request on the basis that there are no documents which fall within the scope of your request, as that request can only cover documents that existed at the time you made the request.”. That letter also set out details of the material considered by the decision-maker, the reasons for the decision and information on your rights of review.
10. On 16 August 2021, you requested “an internal review of Australian Communications and Media Authority’s handling of the information request made 13 July 2021.”. I consider that your request is an application for internal review of the FOI decision made on 12 August 2021 under s54B of the FOI Act, particularly as your request asked that it be passed to “the person who conducts Freedom of Information reviews”.

My Decision and reasons for my decision

Scope

11. Having considered your FOI request of 13 July 2021 and the correspondence between yourself and ACMA staff about the scope of your request, I am satisfied that the scope of your FOI request is as identified in the decision of 12 August 2021, being:

“the document(s) that the ACMA issued to [Vodafone, Telstra and Optus], to correct the performance and conduct issues of the offending participants in the industry... [in reference to] the non-compliance issue brought to the ACMA’s attention on 7 June 2021.”
12. Further, I am satisfied that the scope as stated above is limited to documents relating to the issues raised by you on 7 June 2021. In support of this, I note that this is confirmed in the correspondence between yourself and ACMA staff about the scope of your request on 21 July 2021.
13. In identifying the documents within the scope of your request, I understand that ACMA staff conducted a thorough search of the ACMA’s record management systems, as well as searching staff emails. As part of the internal review, I have searched the ACMA’s record management systems again and confirmed with ACMA staff that worked on the issues raised by you on 7 June 2021 that no additional documents exist that fall within the scope of your request.
14. I am satisfied that the searches conducted have identified that no documents exist which fall within the scope of your request. My decision in relation to your request for review follows. I note that in making my decision, I have had regard to:

- (a) the FOI Act;
- (b) the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- (c) your FOI request and request for internal review of the ACMA's decision of 12 August 2021;
- (d) the ACMA's decision of 12 August 2021; and
- (e) the searches and document discovery processes conducted by the ACMA in respect of your FOI request.

Decision and reasons for decision

15. I affirm the decision under review (being the decision made on 12 August 2021) for the reasons set out by the primary decision-maker. That is, my decision on review is to refuse your request for documents identified in your FOI request of 13 July 2021 in accordance with subparagraph 24A(1)(b)(ii) of the FOI Act. I am satisfied that all reasonable attempts have been made to find documents that were within the scope of your request at the time of your request, being 13 July 2021; and that no such documents exist.
16. My searches of the ACMA's record management systems and enquiries of ACMA staff confirm that as of 13 July 2021 the ACMA had not issued any document to Vodafone, Telstra or Optus to correct any performance and conduct issues in relation to the issues brought to the attention of the ACMA by you on 7 June 2021.

Document provided outside of the scope of the FOI request

17. As noted in the decision letter of 12 August 2021, the ACMA has identified one document that was created after the date of your FOI request that, had that document existed at the time you made the FOI request, would have been within scope of your request. I note that you were provided a copy of that document on 5 August 2021.

Other matters raised in your email of 16 August 2021

18. I note that in your email of 16 August 2021, you have raised five points concerning the ACMA's consideration of the issues raised by you with the ACMA on 7 June 2021. Further, you "request that the ACMA performs an internal review of this request and its archives again, and clarifies what documents (if any) Mr Sabo and his associates generated/received/have access to, with respect to these non-compliance, performance and conduct issues.". These matters are outside of the scope of your FOI request of 13 July 2021 which is the subject of this review. Should you wish to seek access to a broader scope of documents, a new FOI request should be lodged with the ACMA.
19. You requested, should I confirm that no documents can be found, that I provide you with valid contact details for the ACMA's risk management department or equivalent. The ACMA's risk management area can be contacted at Risk@acma.gov.au.

Your rights of review

20. The FOI Act does not allow for any further internal review process by the ACMA in respect of your FOI request. Accordingly, if you are dissatisfied with my decision, you may wish to make an application for review to the Office of the Australian Information Commissioner. Please find enclosed the ACMA's information sheet entitled *Freedom of Information Act 1982 – Rights of Review* which outlines your review rights. If you have any questions, please contact me on 03 9963 6860 or by email at allan.major@acma.gov.au.

Yours sincerely



Allan Major

Executive Manager, Licensing and Infrastructure Safeguards Branch

Authorised decision maker pursuant to section 23(1) of the FOI Act

Encl.