



OFFICE OF THE PRIME MINISTER

Reference: FOI/PMO/2021/042

Posty

By email: foi+request-7589-54f4aad5@righttoknow.org.au

Dear Posty

I refer to your request, dated 15 July 2021, made to the Department of the Prime Minister and Cabinet (PM&C) under the *Freedom of Information Act 1982* (Cth) (the **FOI Act**) in the following terms:

Scott Morrison appeared today on the alleged entertainment show "Kyle & Jackie-o" to "Clear Up one thing". That the thoughts of himself farding and shidding in his pants at the engadine maccas in 1997 has been hauntedly living rent free in his head, to the public knowledge at least since 2019.

I request, under the Freedom of Information Act 1982, all documents (yes, all types you have access to) relating to "engadine maccas" and "engadine mcdonalds" that the PMO has access to.

On 2 September 2021, you advised PM&C that 'My "pmo" statement at the bottom of an email was a typo'. I can advise however that because the subject-matter of your request is more closely connected to the functions of the PMO than PM&C, your request would have been transferred to the PMO to be processed under section 16 of the FOI Act.

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; and
- ‘*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 is available at: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

Yours sincerely



John Harris
Senior Adviser

06 September 2021