



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2021/131

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Trav S

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

By email: foi+request-7642-4dbc1d47@righttoknow.org.au

Dear Trav S

I refer to your email of 1 August 2021 in which you made a 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:

Please provide the legal instrument that excludes your department from according procedural fairness in administration decision-making related to the Humanitarian Overseas Service Medal.

I understand the duty may be excluded by legislation. The HOSM letters patent, regulations and declaration do not prescribe such exclusions.

The Australian High Court opines "in the absence of a clear, contrary legislative intention administrative decision-makers must accord procedural fairness to those affected by their decisions."

Your department's Statement of Ministerial Standards "Ministers must be able to demonstrate that they have taken all reasonable steps to observe relevant standards of procedural fairness and good decision making application to decision made by them".

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 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.

The Department’s Parliamentary and Government Branch is the relevant line area responsible for the administration of the Humanitarian Overseas Service Medal. Having regard to the terms of your FOI request and my knowledge of the subject matter of your request, I am satisfied that there are no documents that meet the terms of your FOI request.

I am satisfied that all reasonable steps have been taken to find documents relevant to your 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 a 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



Peter Rush
Assistant Secretary
Parliamentary and Government Branch
30 August 2021