



Australian Government

Attorney-General's Department

Our ref: FOI21/144; CM21/108427

16 September 2021

Faustus

By email: foi+request-7690-40a4be2c@righttoknow.org.au

Freedom of Information Request FOI21/144 – Decision letter

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Department (the department).

Your request

On 17 August 2021, you requested access to:

'...any document containing aggregate statistics relating to the number internal reviews that are conducted annually e.g. "there are x agencies, and a total of y internal reviews were conducted in the year 2020-21".'

On 20 August 2021, the department sought clarification of the terms of your request. On 25 August 2021 you clarified the terms of your request to be for the following:

'...There are 9 divisions at the AAT. If available, I would like statistics that map onto the same divisions e.g. total number internal reviews in relation to FOI, general (citizenship/workers' compensation/...), migration, NDIS, security, etc.

If statistics on those 9 categories don't exist, I would prefer more granular data so I can collapse the data into meaningful categories myself.'

On 8 September 2021, the department acknowledged your request for the following:

'...annual statistics on internal review decisions made by any agency that align with the 9 divisions of the AAT.'

A decision in relation to your request is due on 16 September 2021.

My decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

In making my decision, I have taken the following into account:

- the terms of your request,
- advice provided to me by officers with responsibility for matters to which your request relates,
- the provisions of the FOI Act, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Section 24A of the FOI Act relevantly provides that an agency or Minister may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document:

- is in the agency's possession but cannot be found, or
- does not exist.

When considering a decision to refuse access under section 24A of the FOI Act, the Guidelines relevantly provide at paragraph 3.89 that an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents,
- the current and past file management systems and the practice of destruction or removal of documents,
- the record management systems in place, and
- the individuals within an agency or minister's office who may be able to assist with the location of documents.

To identify the document for your request, I arranged for a comprehensive search of the department's recordkeeping systems using search terms developed with reference to the scope of your request. I also consulted with the business area likely to hold documents relevant to your request.

Having regard to the above, I am satisfied that reasonable steps to locate the documents to which you have sought access were undertaken. I am also satisfied that the documents do not exist within the department's records holdings. I have therefore decided to refuse access pursuant to section 24A of the FOI Act.

Additional information

The Administrative Appeals Tribunal (AAT) provides an avenue for independent merit review of administrative decisions made under Commonwealth legislation. As you noted in your request, the AAT groups these merits review processes into 9 organisational divisions. In each of the AAT divisions, reviews of decisions may have their own specific legislative process to enable a review to be undertaken by the AAT. Statistics on AAT decisions are available at: <https://www.aat.gov.au/about-the-aat/corporate-information/statistics>.

These specific legislative processes means there is no one agency that collects information on all internal review decisions. I have provided some information about how the FOI merit review process works as an example of the review process under the Freedom of Information Act.

FOI Review

Under the FOI Act, a person who is dissatisfied with the decision of an agency or minister on their initial FOI request has a number of avenues of review. A person can seek internal review with the agency or minister, or apply directly for an external merits review by the Information Commissioner (IC review). However, a person cannot apply directly to the AAT for review of an agency or minister's decision under section 54 of the FOI Act. The Office of Information Commissioner (OAIC) has more detailed information about reviews at <https://www.oaic.gov.au/freedom-of-information/reviews/review-of-decisions-made-under-the-freedom-of-information-act-1982/>.

Under section 93 of the FOI Act, agencies and ministers are required to provide information and statistics to the OAIC. The OAIC is required to prepare an annual report under section 30 of the *Australian Information Commissioner Act 2010* (AIC Act). The OAIC Annual report summarises the collected statistics including statistics on internal reviews of agency decisions. The OAIC also makes historical statistics available on data.gov.au at <https://data.gov.au/data/dataset/freedom-of-information-statistics>.

Details on the statistics agencies are required to report is available at: <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/foistats-guide/>.

The OAIC Annual report for 2019-20 is available on the OAIC website at:

<https://www.oaic.gov.au/assets/about-us/our-corporate-information/annual-reports/oaic-annual-reports/annual-report-2019-20/OAIC-Annual-Report-2019-20.pdf>.

Information on internal reviews may be held across government and by different bodies depending on the legislation under which the decision was made.

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

If you wish to discuss this decision, the FOI case officer for this matter is Fiona, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Joanna Baker
Assistant Director
Freedom of Information and Privacy

Attachments

Attachment A: Review rights



Attachment A - FOI Review rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter, and be lodged in one of the following ways:

email: foi@ag.gov.au

post: Freedom of Information and Privacy Section
Strategy and Governance Branch
Attorney-General's Department
3-5 National Circuit BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of the decision letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.