



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2021/234

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Trav S

**DECISION BY: Ms Petra Gartmann
Assistant Secretary
Legal Policy Branch**

By email: foi+request-7860-87b20079@righttoknow.org.au

Dear Mr S

I refer to your request of 13 September 2021, made to the Department of the Prime Minister and Cabinet (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**), in the following terms:

On 17 November 2009, Mr Peter Rush approved PM&C assessment Ref: B09/1640. The assessment is underpinned by a very significant error. The assessment failed to inform government that the GE contingent was comprised from persons including commercial security contractors. Of note, this information was readily available in the public domain when the assessment was produced. The public has informed the department of the errors in this assessment a number of times. It is unclear if the department has acknowledged or informed government of their error. Acting in accordance with the FOI Act we request a copy of the documents evidencing that the department has actually informed government of the errors underpinning their assessment Ref: B09/1640.

In response to the Department's request for you to clarify your request in accordance with section 15 of the FOI Act, you revised your request on 17 September 2021 as follows:

Please refer to FOI/2020/231. The disclosure reveals the department's HOSM assessment (Ref: B09/1640) for Australian contingent to GE Infrastructure for Indian Ocean operation. The assessment fails to inform that the contingent included commercial security contractors. The department states commercial security contractors unworthy for HOSM recognition. Public servants have a duty to act honesty and with integrity and care and diligence in their work. They have a duty to inquire into matters of substance. The assessment is substantially different to published accounts of a member of the contingent. Eyewitness accounts from other members of the contingent corroborate the published account. A Commonwealth

legislative instrument was borne from the assessment but the assessment was premised from a substantial omission. The public have a right to know what, if any actions were taken after the department was informed of the omission.

With that in mind, we respectfully seek a copy of any document:

- 1. recording that the department has acknowledged HOSM assessment (Ref: B09/1640) is substantially flawed in that it failed to inform that the contingent included commercial security contractors.*
- 2. recording that the public servant responsible for administering the HOSM program actually informed their respective superior (i.e. line manager) of the omission in HOSM assessment (Ref: B09/1640)*

Please limit the search to documents created between 2019 to now.

On 12 October 2021, in response to the Department's request for a 30 day extension of time, you agreed to provide an extension of seven days until 25 October 2021.

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 Act.

Decision

I have decided to refuse your request under section 24A(1)(b)(ii) of the FOI Act.

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

- the terms of your request;
- searches undertaken by the Department regarding your request;
- the FOI Act; and
- the 'Guidelines made by the Australian Information Commissioner issued under section 93A of the *Freedom of Information Act 1982*'.

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 your request, searches for documents were undertaken by the business area in the Department with responsibility for the subject matter of the FOI request. Those searches did not locate any documents meeting the terms of the request.

I am satisfied that all reasonable steps have been taken to find documents meeting the terms of your request and I am satisfied that no documents meeting the terms of your request exist in the Department's possession.

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 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/>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Petra Gartmann', with a long horizontal line extending to the right.

Petra Gartmann
Assistant Secretary
Legal Policy Branch

25 October 2021