



FOI 14/235; 14/14651

5 December 2014

Scott

By email only: foi+request-796-7702687b@righttoknow.org.au

Dear Scott

Freedom of Information Request no. FOI 14/235

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary

I, Frances Brown, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

On 10 November 2014 you requested access to documents relating to empowering the Queen of Australia. Specifically you sought access to:

Empowering documents or legislation issued by the United Kingdom Government or Parliament empowering the Queen of Australia to use the Royal Prerogatives granted to the Queen of the United Kingdom.

I have identified that the department has no documents that fall within the scope of your request. I did this by arranging for comprehensive searches of both electronic and hard copy records across the department, as well as making enquiries of those who may have been able to help locate documents within the scope of your request.

I am satisfied that the searches undertaken by the relevant areas of this department constitute a 'reasonable search' for the purposes of Part 3 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act; that is, '*a reasonable search on a flexible and common sense interpretation of the terms of the request*'.

I have accordingly decided to refuse your request for access, as the documents that you seek are not held by this department. More information, including the reasons for my decision, is set out below.

Decision and reasons for decision

With regard to the documents requested in your application, I have found that:

- the documents you requested relating to empowering documents or legislation empowering the Queen of Australia to use Royal Prerogatives granted to the Queen of the United Kingdom do not exist (section 24A(1)(b)(ii)) – information about why they do not exist is given below.

Material taken into account

I have taken the following material into account in making my decision:

- the FOI Act (specifically sections 24A(1)(b)(ii))
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act

My reasons for refusing access are given below.

Documents non-existent (s 24A(1)(b)(ii))

My findings on material questions of fact are that the documents you have requested do not exist within this department. Under section 24A(1) of the FOI Act, an agency may refuse a request for access to documents if:

- (a) *all reasonable steps have been taken to find the document; and*
- (b) *the agency or Minister is satisfied that the document:*
 - ...
 - (ii) *does not exist.*

Following all reasonable steps to find the documents, I am satisfied that the documents that you have requested do not exist within this department, so I have decided to refuse your request for access to documents under section 24A of the FOI Act.

The Queen's role in relation to Australia is entrenched in the Constitution. Section 1 states that the Commonwealth parliament consists of a House of Representatives, a Senate and the Queen. Under section 2, the Queen is empowered to appoint the Governor-General as her representative in the Commonwealth. Under section 61 the 'executive' power of the Commonwealth is vested in the Queen and exercisable by the Governor-General. The Queen does not, however, play a day to day role in Australian government. Further, it is a fundamental principle of Australian constitutional practice that those few functions which the Queen does perform as Queen of Australia are performed in accordance with advice from the Australian Government.

A copy of the Constitution can be found online at:
<http://www.comlaw.gov.au/Details/C2005Q00193>

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email: foi@ag.gov.au
post: Freedom of Information and Privacy Section
Office of Corporate Counsel,
Attorney-General's Department,
3-5 National Circuit

Barton, ACT 2600

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

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 this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

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

Questions about this decision

If you wish to discuss this decision, please contact the department by email at foi@ag.gov.au or by telephone on (02) 6141 6666.

Yours sincerely



Frances Brown

Director, Freedom of Information and Privacy Section