



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2021/311

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Francis Unmeopa

DECISION BY: Peter Rush
Assistant Secretary
Parliamentary and Government Branch

Mr Francis Unmeopa

By email to: foi+request-8145-eaadcl6f@righttoknow.org.au

Dear Mr Unmeopa

FOI request

I refer to your email of 30 November 2021 in which you made a request (the **FOI 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:

My name is Francis Sonny Graham Unmeopa. I am from the Meriam Le of the Eastern Torres Strait Islands and I represent the interests of the men from the First Nations engaged by The Australian government to assist in the reconstruction effort in Iraq.

Respectfully, I have two requests for documentation under the FOI act.

Please refer to the 1 May 2008 Humanitarian Overseas Service Medal Regulations Delegation. This instrument delegates 2 powers to the person holding the office of assistant secretary, awards and culture Branch (position number 1860).

I note, that on 19 March 2012 the department (PM & C) emailed AusAID (DFAT) stating

'further to your recent discussion with Peter, here's draft text for your consideration that we propose to brief the new PSPM Senator Jan McLucas with soon'. Titled 'Amendment of Humanitarian Overseas Service Medal (Iraq) declaration 2004 to extend to specified commercial contractors' the document recommended the PSPM do two things - 1. Sign the letter to the Governor-General recommending she makes a declaration under HOSM Regulations 2011, extending eligibility for the 'Iraq' clasp to the medal, to specified commercial contractors (Attachment A), and 2. Sign the proposed Humanitarian Overseas Service Medal (Iraq) Declaration 2011 (Attachment B). And on 11 April 2012 your department emailed AusAID (DFAT) providing a written agreement to 'settle the declaration ... and brief the PSPM next week'.

I note, FOI disclosures many years later indicate that the department did not deliver the documents to the PSPM in accordance with the agreement. The 2 powers delegated to the

assistant secretary do not appear to extend to that person being entitled to make ministerial-level decisions concerning Australian honours and symbols policy. However, if the assistant secretary was granted such powers under delegation or under any other administrative instrument, please provide a copy of that document outlining such in accordance with the FOI Act.

The department in response to FOI inquiries many years later admitted that they withheld the documents from PSPM McLucas as they were continuing consultations and deliberations. Please provide a copy of the document in which the department informed AusAID that they were withholding the documents from PSPM McLucas in order to continue consultations and deliberations.

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) 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:

- the terms of your request;
- my own knowledge of the subject matter of your request
- the outcome of searches;
- the FOI Act; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reasons

Subsection 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 Guidelines state at 3.88:

The Act is silent on what constitutes 'all reasonable steps'. The meaning of 'reasonable' in the context of s 24A(1)(a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.

Based on my own knowledge of the subject matter, and searches undertaken relevant to the scope of the request, I am satisfied that all reasonable steps have been taken to find the documents relevant to the FOI request and that the documents requested do not exist.

I have therefore decided to refuse the request under subsection 24A(1) of the FOI Act.

Processing and access charges

I have decided not to impose processing charges in respect of the applicant's 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/information-commissioner-review/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this decision. 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/make-an-foi-complaint/>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Rush', written in a cursive style.

Peter Rush
Assistant Secretary
Parliamentary and Government Branch

15 December 2021