



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2021/317

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Trav S

DECISION BY: Petra Gartmann
Assistant Secretary
Legal Policy Branch

Trav S

By email to: foi+request-8196-659fba27@righttoknow.org.au

Dear Trav S

I refer to your email of 14 December 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:

- 1. Please refer to the Federal Court decision in 'Taggart and Civil Aviation Authority (FOI) [2016] AATA 327'. As you will understand the Court ruled that the non-substantive information in emails such as the subject line, address block, salutation, classification, closing words and signature block are not exempt under section 42 of the FOI Act.*
- 2. Despite being made aware of the Court's ruling your department has failed to recognise, or act upon, the ruling in 3 recent internal review requests.*
- 3. Acting in accordance with section (2)(b) of the FOI Act we respectfully request access to the document authorising your department to ignore Federal Court rulings related to access to documents in accordance with the FOI Act.*
- 4. Disclosure will promote Australia's representative democracy by contributing towards increased public participation in government processes, with a view to promoting better-informed decision-making.*

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 **FOI 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 FOI Guidelines provides that 'reasonable steps' would amount to include all appropriate or suitable search actions that relate to the circumstances surrounding the documents requested, this is defined to include:

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 identify any 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 'Petra Gartmann', with a long horizontal line extending to the right.

Petra Gartmann
Assistant Secretary
Legal Policy Branch

10 January 2022