



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ22/00045

By email: foi+request-8442-abfb7e01@righttoknow.org.au

Your Freedom of Information request – FOIREQ22/00045

Dear Cameron L

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) received on 16 February 2022.

Your request was made on the following terms:

I refer to my FOI request made of the Department of the Prime Minister and Cabinet (PM&C) here: https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2Fcontraventions_of_the_foi_act_by&data=04%7C01%7Clegal%40oai.c.gov.au%7Cde32543f466b4d7bdf7e08d9f0fb58af%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C0%7C637805785648864607%7CUnknown%7CTWFpbGZsb3d8eyJWljoimC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6I1haWwiLCJXVCi6Mn0%3D%7C3000&data=APsmoOVf%2F81mT83Vhsan4mC8MNP0bBXNxbH3j1FfTY%3D&reserved=0

PM&C has not made a decision on that request and has presumably, therefore, contravened s.15(5)(b) of the FOI Act.

I've been advised, by a staff member at PM&C, that PM&C's senior management group has implemented a practice whereby PM&C decision-makers are not allowed to make decisions on applications made under the FOI Act unless and until the Prime Minister's Office agrees with the decision proposed to be made, and agrees that the decision should be made.

In respect of my FOI application, a staff member at PM&C advised me that they're unable to make a decision on my request unless and until they're directed to by the Prime Minister's Office - something which has apparently yet to occur.

I've lodged a complaint and a request for IC review (with the OAIC) in respect of PM&C's access refusal decision and contravention of the FOI Act but I'm aware that as a result of systemic underfunding of the Office of the Australian Information Commissioner (OAIC) by the Government (which was the course of action pursued by this Government after it failed in its efforts to abolish the OAIC) IC review decisions and investigation of FOI complaints likely take in excess of 2 years to finalise.

That being so, under the FOI Act, I seek access to a copy of any document held by the OAIC (rather than PM&C) that falls within the terms of my FOI request made of PM&C here: https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2Fcontraventions_of_the_foi_act_by&data=04%7C01%7Clegal%40oai.c.gov.au%7Cde32543f466b4d7bdf7e08d9f0fb58af%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C0%7C637805785648864607%7CUnknown%7CTWFpbGZsb3d8eyJWljoimC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6I1haWwiLCJXVCi6Mn0%3D%7C3000&data=APsmoOVf%2F81mT83Vhsan4mC8MNP0bBXNxbH3j1FfTY%3D&reserved=0

[The terms of the FOI request you made to PM&C is as follows:]

'Dear Department of the Prime Minister and Cabinet,

I refer to documents released by the Office of the Australian Information Commissioner (OAIC) finding that the Department of the Prime Minister and Cabinet acted illegally by reference to its obligations under the FOI Act as available here: [https://www.righttoknow.org.au/request/8 ...](https://www.righttoknow.org.au/request/8...)

(<https://www.righttoknow.org.au/request/8096/response/23753/attach/10/FOIREQ21%2000263%20Documents%20for%20release.pdf>)

I note the recommendations of the Acting Freedom of Information Commissioner flowing from the illegalities engaged in by the Department and stated as follows:

"Pursuant to s 88 of the FOi Act, I make the following formal recommendations to the Department that I believe the Department ought to implement within the timeframes specified below:

- 1. The Department appoint an Information Champion by 5 November 2021. The Information Champion may be supported by an information governance board to provide leadership, oversight and accountability necessary to promote and operationalise the Department's compliance with the FOi Act.*
- 2. The Department provide training to FOi Section staff and relevant Senior Executives by 5 January 2022 about the obligations under the FOi Act to comply with statutory processing periods.*

I request that the Department advise the OAIC of the implementation of each recommendation within the timeframes specified."

Under the FOi Act, I seek access to a copy of any document given by the Department to the OAIC that advises the OAIC of the implementation of the above statutory recommendations as made by the Acting Freedom of Information Commissioner in response to the illegalities engaged in by the Department.

There is a wide public interest in whether the Prime Minister's Department and its Secretary have complied with the statutory recommendations of the regulator or whether the Department has thumbed its nose at those recommendations - not least because the latter course constitutes a clear contravention of the APS Code of Conduct on the part of the Head of the APS, Mr Phil Gaetjens.

*Yours faithfully,
L Cameron'*

Decision

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

Searches undertaken

To find the document you requested, staff of OAIC searched in OAIC's document storage systems including Outlook email inboxes, and the OAIC case management system *Resolve*.

I have identified 1 document within the scope of your request. I have decided to grant you full access to this document.

Reasons for decision

Material taken into account

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

- your freedom of information request;
- the document at issue;
- submissions received by relevant third parties;
- the FOI Act; and

- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

Release of document

Because a relevant third party was consulted in the making of this decision and has objected to the release of the document within scope of this request, I am required, under s 27A of the FOI Act to advise them of my decision and provide them with an opportunity to seek:

- internal review of my decision, or
- review of my decision by the Information Commissioner.

The third party has 30 days from the date they are notified of my decision in which to seek review. As a result, the document which the third party has objected from release cannot be released to you until this time has expired, or until any internal review or appeal has been completed and my decision to release the document is upheld or confirmed. This document is identified in the schedule of documents attached. Please see the following page for information about your review rights and information about the OAIC's disclosure log.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'E Elliot', written in a cursive style.

Emily Elliot
Senior Lawyer

19 April 2022

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

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

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information](#) page on our website.

Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish. As the documents released to you do not contain information that would be unreasonable to publish, they will be published on the disclosure log within 10 days of their release.



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Schedule of documents – Freedom of information request no. FOIREQ22/00045

Document no.	Page no.	Date	Description	Decision on access
1	1 - 2	27 October 2021	<i>Response to the notice on completion of a complaint investigation in accordance with section 86 of the Freedom of Information Act 1982 (Cth) (the FOi Act)</i>	Full Access Subject to third party review rights

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