



**Australian Government**

**Australian Taxation Office**

GPO Box 1797 MELBOURNE VIC 3001

Our Reference: FOI 1-6A4NPPV

Contact officer: Julie Galeotti

Telephone: 03 928 51810

Facsimile: 03 928 51702

Issue date: 2 February 2015

Mr Phillip Sweeney

Via email to Phillip Sweeney <foi+request-855-4465ed26@righttoknow.org.au>

Dear Mr Sweeney,

### **Decision regarding your Freedom of Information request**

I refer to your email of 8 January 2015 requesting information under the Freedom of Information Act (FOI Act).

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

#### **Scope of Request**

You have requested:

*'any document in the possession of the ATO that would confirm that Section 11 of the FOI Act does not apply to the Australian Tax Office. That is that 'every person does not have a right of access to documents held by the ATO in accordance with the Freedom of Information Act'.*

#### **Decision**

I am unable to provide you with any documents which confirm that Section 11 of the FOI Act does not apply to the ATO as I am confident no such documents exist.

Section 11(1) of the FOI Act states

- (1) *Subject to this Act, every person has a legally enforceable right to obtain access in accordance with the Act to;*
- (2) (a) *a document of any agency, other than an exempt document; or*
- (3) (b) *an official document of a Minister, other than an exempt document.*

This general right of access is 'subject to this Act' and for 'access other than an exempt document'.

Section 11A(4) of the Act states;

*The agency of Minister is not required by this Act to give the person access to the document at a particular time, if, at that time, the document is an exempt document.*

The decision letter regarding your earlier request (ref no.1-67W2DRG) explained that the documents you requested could not be provided because they were exempt. It was not that Section 11 of the FOI Act did not apply. (Please note that the decision letter also set out your rights of review if you disagreed with the decision).

I am satisfied that the ATO does not hold any documents that confirm that Section 11 of the FOI Act does not apply to the ATO.

I am therefore refusing access to the documents you have requested on the grounds that the documents requested do not exist.

### **Section 24A**

S24A of the FOI Act allows agencies to refuse access to documents if:

- (a) all reasonable steps have been taken to find the document; and
- (b) the agency of Minister is satisfied that the document;
  - is in the agency's or Minister's possession but cannot be found; or
  - does not exist.

Access to the documents requested is refused under Section 24A of the FOI Act.

### **Your rights of review**

If you are unhappy with the decision, you can either request an internal review or request an independent review by the Australian Information Commissioner. You can also apply to the Australian Information Commissioner after an internal review has been conducted.

A request for an internal review needs to:

- be in writing
- be sent to us within 30 days of being notified of my decision, and
- be sent, quoting reference number FOI 1-6A4NPPV via:
  - email at [foi@ato.gov.au](mailto:foi@ato.gov.au) or
  - mail to:  
Australian Taxation Office  
GPO Box 1797, Melbourne Vic 3001

The internal review will be done by an officer who did not make the initial decision.

A request for an independent review by the Australian Information Commissioner needs to:

- be sent within 60 days of being notified of my decision;
- include a copy of this notice;
- include an address where notices can be sent (eg your email address); and
- be sent to the Office of the Australian Information Commissioner:

by mail: GPO Box 2999  
CANBERRA CITY ACT 2601  
by fax: (02) 9284 9666  
by email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

You may also apply to the Australian Information Commissioner if you have not been informed of the outcome of an internal review within 30 days.

Please note: The Australian Government has introduced a Bill into Parliament to abolish the OAIC. For more information about how the OAIC is handling FOI matters please visit their website at [www.oaic.gov.au](http://www.oaic.gov.au).

## Complaints

Any complaint about the processing of your FOI request can be directed to the Commonwealth Ombudsman. The complaint should set out the grounds on which you consider the action should be investigated. Complaints can be made in writing, by phone, in person or by using an online form available from their website.

- 1300 362 072 (calls from mobile phones at mobile phone rates)
- [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)
- GPO Box 442 Canberra ACT 2601
- [www.ombudsman.gov.au/pages/making-a-complaint/](http://www.ombudsman.gov.au/pages/making-a-complaint/)

For further details regarding the Commonwealth Ombudsman, visit: [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

## For more information

If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for Julie Galeotti on extension 51810.

Yours sincerely,



Julie Galeotti  
Senior FOI Adviser  
General Counsel  
Australian Taxation Office