



Australian Government
Department of Defence

Ministerial and Executive Coordination and Communication Division

Ministerial and
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FOI 217/14/15

20 March 2015

Mr Culley Palmer

By email: foi+request-861-4b0e0ebd@righttoknow.org.au

Dear Mr Palmer

Application for *internal review*

1. I refer to your application for *internal review* on 19 February 2015, under section 54 of the *Freedom of Information Act 1982* (FOI Act), of the decision by Ms Andrea Sansom, Acting Director Freedom of Information, on 16 February 2015, to refuse access to your FOI request under section 24A [Documents cannot be found or do not exist] of the FOI Act.

Documents subject to your *internal review* application

2. In relation to the documents subject to your application for *internal review*, your FOI request was for access to:

'...all emails sent to and from the (then) Minister for Defence regarding the December 2005 incursion of protesters into Joint Facility Pine Gap.

For easy of processing, I wish to exclude any duplicates and drafts, and also the personal information of the individuals concerned.'

3. I have taken your application for *internal review* to be for access to the documents requested in paragraph 2 above and in existence between 1 December 2005 and 20 January 2006, during which time Senator Robert Hill was the Minister for Defence.

Contentions

4. In your application for *internal review* you contented that while the term 'incursion' was one provided by yourself, quoted from the research page you linked to for reference, it is probably not a term that is likely to be used by the Department of Defence (Defence) in either emails or internal record keeping. You stated that the search terms were too narrow to adequately identify documents fitting within the scope of the request. You subsequently requested that the searches undertaken should match Defence's own language. Specifically, you suggested the terms used include 'protect', 'trespass', 'incident', 'break-in' and 'demonstration' in relation to the incursion of protesters into Joint Facility Pine Gap.

Reviewing officer

5. I am authorised to make this decision under arrangements approved by the Secretary to the Department of Defence under section 23 of the FOI Act.

Decision

6. Based on the findings and for the reasons set out below, I have decided to refuse access to your request under subsection 24A(1) of the FOI Act because, notwithstanding thorough and diligent searches, documents cannot be located or do not exist.

Material taken into account

7. In reaching my decision I referred to the following:

- a. the outcome of fresh searches conducted by International Policy Division (IP Division), Directorate Ministerial and Parliamentary Liaison Services (DMPLS), Strategic Policy Division (SP Division), Defence Legal Division (DL Division) and Office of Deputy Secretary Intelligence and Security (ODSI&S) and Defence Security Authority (DSA);
- b. the relevant provisions of the FOI Act; and
- c. the *Guidelines issued by the Australian Information Commissioner under section 93A of the Freedom of Information Act 1982*.

8. On 24 February 2015 my office requested that IP Division, DMPLS, SP Division, DL Division and ODSI&S undertake fresh searches for documents identified in your application for *internal review*.

Findings and reasons for the decision

Section 24A

9. Section 24A of the FOI Act allows agencies to refuse FOI requests if the documents cannot be found, do not exist or have not been received. Specifically, subsection 24A(1) states 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 documents; 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.'*

Searches by IP Division

10. IP Division staff conducted fresh searches of soft copy files held on a network drive on the Defence Restricted Network (DRN) and higher level systems, and also hard copy files held in IP Division. The searches included the corporate recordkeeping system, which manages the metadata for paper based files. The keywords provided – 'protest', 'trespass', 'incident', 'break-up', 'demonstration' – and additional key words were used to conduct the search of the records collection.

The * symbol was used as a wild card e.g by entering protest*. The search included protests, protesting, protestors etc.

11. The soft copy files were also subject to a 'search for files or folders containing text' search which produced no further results and in addition, the files were searched by the desk officer using the organised file structure to locate where possible relevant documents would be found. None were found.

12. The same search terms used at paragraph 10 above were entered into the electronic record management system for the higher level system and no emails that fall within the scope of your request or in any way relate to the December 2005 incident were found. In addition, the desk officer searched the soft copy files using the organised file structure to locate where possible relevant emails would be found. None were found.

Searches by DMPLS

13. DMPLS staff conducted further searches on the Defence Parliamentary Workflow System (DPAWS) using the following key words: 'Pine Gap'; 'protest'; 'trespass'; 'incident'; 'incursion'; and 'demonstration' to identify any email correspondence to or from the Minister for Defence. DMPLS staff advised that no emails captured by your request were found during the above searches.

Searches by SP Division

14. SP Division staff advised that no emails within SP Branch's Work Group on 'Objective' on both DRN and higher level systems was found on this matter. Objective is Defence's document and records management system, approved by the National Archives of Australia (NAA), and is the only electronic record keeping system the Branch uses to store its documents. Search terms used were 'Pine Gap'; 'protest(s)'; 'incident(s)'; 'trespass'; 'break-up'; and 'demonstration(s)'. Hard copy files held by SP Branch were also searched for emails containing the search terms above, but did not identify any emails matching the scope of your request.

Searches by DL Division

15. The Office of Defence General Counsel (ODGC), in DL Division, has confirmed that fresh searches have been conducted, however no emails were identified that fall within the scope of your request.

16. The ODGC operates two separate but interlinking electronic record management systems; Objective and a Lotus Note database. The Lotus Notes database, known as OSCAR, is an index for Corporate Files (both physical and electronic) and also acts as a legal advice database. OSCAR has file references, which include the full file name, and legal advices dating back to 1992. OSCAR may be searched via file name or completed advice using standard bullion functionality. Searching via file name reveals all related Corporate Files and any individual advices that are attributed to the selected Corporate File. The search function in OSCAR reveals terms in both the file name, and the title of the advice. ODGC undertook searches within OSCAR, and hard copy files, however there were no emails identified fitting within the scope of your request.

Searches ODSI&S

17. The recordkeeping environment within the I&S group comprises Electronic Document Management System (EDMS) on DRN and higher level systems. The I&S group has a dedicated records management cell that ensures staff members comply with Defence record keeping policy and Commonwealth legislation. The ODSI&S are transitioning to maintaining electronic records only.

18. I&S staff conducted new searches of EDMS records on DRN and higher level systems. The results of the searches on keywords 'JDFPG', 'Trespass', 'Pine Gap', 'Incident', 'Break-up' and 'Demonstration', there were no emails identified as captured by your FOI request.

DSA

19. DSA staff carried out a number of searches across the DRN and higher level systems, however no new information was identified.

20. DSA requires departing staff members to store all correspondence related to their role, and as part of the handover, in 'Objective'. Supervisors and managers are responsible for ensuring this action has been undertaken before staff members leave DSA.

21. Security Operations branch scanned Security Incident Response and Investigation electronic file holdings relevant to the period specified in the scope of your request, which is inclusive of records prior to about 2010 on both DRN and higher level systems. No emails relevant to your request could be found.

22. Staff also conducted a search of the Defence Policing and Security Management System (DPSMS) with no results for 2005. Staff confirmed this search would cover Security Investigations Unit (SIU) investigations in 2005.

23. DSA staff searched hard-copy files from 2005 pertaining to incidents not investigated by SIU. However, no reference to any incidents at Pine Gap were located.

Outcome of searches

24. The requested emails sent to and from the (then) Minister for Defence regarding the December 2005 incursions of protesters into the Joint Facility Pine Gap are exempted from disclosure under section 24A of the FOI Act, because notwithstanding that a thorough and diligent search had been conducted they cannot be located based on the above searches. I am unable to therefore accede to your request for access to the emails.

Documents pertaining to your request

25. Although the above searches did not identify emails that were subject to your request, ODSI&S advised that they identified a small number of Ministerial Submissions that contain reference to the key search areas. If you would like to seek access to the Ministerial Submissions please make a request to the FOI Directorate at FOI@defence.gov.au, for access to '*ministerial submissions to the Minister for Defence regarding the December 2005 incursion of protesters into the Joint Defence Facility Pine Gap*'.

Rights of Review

26. You are entitled to seek review of this decision. **Enclosure 1** sets out your rights to apply for review if you are dissatisfied with my decision.

27. If you have any questions in relation to this matter please contact me.

Yours sincerely



Damien Chifley
Acting Assistant Secretary

Enclosure:

1. Freedom of Information – Rights of review