



Australian Government
Department of Finance

Reference: FOI 22/54 IR
Contact: FOI Team
E-mail: xxx@xxxxxxx.xxx.au

C Drake
Right to Know

By email only: xx@xxxxxxxxxxx.xxx.xx

Dear Mr Drake

Freedom of Information Internal Review Request – FOI 22/54

On 25 July 2022, the Department of Finance (Finance) received your email requesting access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to the following documents:

You operate the site <https://www.domainname.gov.au/about> which is the gov.au domain name registration portal.

This portal in turn supplies registration data to the .au registry operator (Afilias Australia Pty Ltd) who maintains a Master List of gov.au public domain names.

Please supply the current Master List, preferably in machine-readable format.

Note that F.o.I. rules require that you contact and/or negotiate with me if you encounter any hurdles with the above; please make sure you do this if for any reason you find it difficult to simply obtain (e.g. ask Afilias) and supply the above list. Note also that historical "A-Z" sites directories once existed in government, however, they were never complete, and all appear to be taken down at present - I'm not interested in old or incomplete lists, I'm after the current Master List as maintained by the registry.

Original Decision

On 23 September 2022, Finance notified you of the original decision maker's access refusal decision, made on the basis that the document is exempt in full under section 45 of the FOI Act.

Internal review request

On 24 September 2022, Finance received your email, in which you sought an internal review of Finance's original decision on the basis of the following:

I am writing to request an internal review of Department of Finance's handling of my FOI request 'Current, comprehensive list of gov.au domain names as recorded by the registry operator'.
The Section 45 refusal is nonsense, and the response I received is in bad faith.

The guideline quote: "information which has been communicated in circumstances giving rise to an obligation of confidence" does not apply, because I asked for a list of public domains names with the registrar in question is obliged to (and already has) place into the *public* DNS, shared with other

registrars, and by other means also made publicly available. There's no possibility for detriment, no threats involved, no requirement of confidentiality over the list of names that I'm requesting (obviously - it can't be both public and confidential at the same time), and no chance that any of the domains in the list are "specifically identified" as being confidential.

It further states "The Master List does not exist in a discrete form, and could be produced in response to your FOI request, as at 25 July 2022." which is a direct contradiction of what I was told by the registry (and logically impossible, since this list is used in the DNS responder of the registry, which necessarily and technically requires that it does exist in a discrete form). Note also that while we know for certain the registry has this list in discrete form, it's highly likely that the government itself also has a copy or other representation of this list, or can easily produce one. Just because an outside company has the job of maintaining a list from information supplied by government, doesn't mean that government itself cannot do the same. I don't care where the list comes from, nor if I have to compile it myself from the records that originally fed the system that the registrar uses to compile theirs.

Accordingly, Section 45 does not (and could never) apply:

(1) the information is NOT confidential, and could never possibly be so

(2) I don't care whether that information comes from a registrar or a government department (or both, like I suggested - you get the list from them (if you don't already have it or a copy), then give it to me - nobody breaches anything that way). I suggested the registry option to you simply to make it easier for you to release the information to me, not as the only option available.

I disagree with and contest the overly-verbose, distracting, and off-topic "Background" and request that it be disregarded in its entirety, not least because it suggests that a statement I made (for which I provided written reference: "[.au Support - Case #01239018] The "master list" of gov.au public domain names." is "This is inconsistent with the information that has been provided directly to Finance by Identity Digital." - that is FALSE. Here, to be clear, is the exact text of their response to me:-

" Hi Chris,

Since you need report on gov.au domains you need to contact the registrar Department of Finance-.au. You can either get this report for them or if they request us to send it, we are happy to send the report to the registrar. But, it should be requested by the registrar's authorised contact.

Should you require further assistance please do not hesitate to contact us and include the string: ref:_00DD0CWb4._5004G2Ri8xw:ref in the body of all future correspondence with regards to this ticket. To do so, you may simply reply to this message.

Sincerely,

Abhinav Vatsavaya

.au Support

Web Portal: <https://portal.afilias.info/>

Email: suppoxx@xxxxxxx.xxm.au

Phone: +61-3-9945-0650 (Australia)

Phone: +1-416-619-3038 (North America) "

So to make the claim that they are anything other than "happy to send the report" is an absolute lie. If finance did indeed "consult with" anyone on this issue, and if they now "object" (note above how they do not), then any such "consultation" has clearly been done in bad faith with the intent of fabricating an excuse to refuse my request.

The purpose of this letter is to provide you with notice of my internal review decision under the FOI Act.

Internal Review Decision

I have decided to affirm the original decision, being to find that the Master List is exempt in full under section 45 of the FOI Act. A copy of the original decision letter is at **Attachment A**.

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

- the terms of your original FOI request, subsequent correspondence and internal review request;
- the original decision letter sent to you on 23 September 2022;
- the content of the document that would fall within the scope of your request;
- the Sponsorship Agreement between auDA and Finance;
- the Registry-Registrar Agreement between Identity Digital and Finance;
- consultation with auDA and Identity Digital and the joint submissions made by those parties;
- the relevant provisions of the FOI Act;
- relevant FOI case law (referenced throughout the original decision); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Exemptions

Breach of confidence – section 45

Section 45 of the FOI Act provides:

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

The FOI Guidelines provide:

[5.158] A breach of confidence is the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence. The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.

The FOI Guidelines further provide:

[5.159] To found an action for breach of confidence (which means section 45 would apply), the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment.

I have considered section 45 of the FOI Act, the FOI Guidelines, your reasons for the internal review, together with the reasons set out in Finance's original decision letter under the heading 'Breach of confidence – section 45' from pages 5 to 9.

In particular, you stated:

The guideline quote: "information which has been communicated in circumstances giving rise to an obligation of confidence" does not apply, because I asked for a list of public domains names with the registrar in question is obliged to (and already has) place into the *public* DNS, shared with other registrars, and by other means also made publicly available. There's no possibility for detriment, no threats involved, no requirement of confidentiality over the list of names that I'm requesting (obviously - it can't be both public and confidential at the same time), and no chance that any of the domains in the list are "specifically identified" as being confidential.

I consider that Finance's original decision letter, under the subheading 'quality of confidence' on pages 6-7, addresses your above statement. In particular how individual domain names are technically publicly accessible, however they require the user to already know the domain name to return results via the lookup function. Further, the aggregate of the domain names, being the Master List, is not publicly accessible.

I consider that the five criteria listed in the FOI Guidelines at 5.159 are satisfied, for the same reasons as providing in Finance's original decision letter. Given that I support the reasoning provided in that letter, I do not consider it necessary to repeat that information here.

Based upon the above, I consider that the Master List is exempt in full under section 45 of the FOI Act.

Authorised decision-maker

I am authorised by the Secretary of Finance to grant or refuse access to documents.

Review and appeal rights

You are entitled to request an external review by the Office of the Australian Information Commissioner (OAIC) of my decision. The process for review and your appeal rights are set out at **Attachment B**.

Yours sincerely,

John Sheridan
First Assistant Secretary
Information and Communications Technology Division
Department of Finance
19 October 2022



Australian Government

Department of Finance

Freedom of Information – Your Review Rights

If you disagree with a decision made by the Department of Finance (Finance) or the Minister for Finance (Minister) under the *Freedom of Information Act 1982* (the FOI Act) you can have the decision reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of the documents that has not been agreed to by Finance or the Minister, or if your application to have your personal information amended was not accepted. There are two ways you can seek a review of our decision: an internal review (IR) by Finance or the Minister, or an external review (ER) by the Australian Information Commissioner (IC).

Internal Review (IR)

If, Finance or the Minister (we/our), makes a Freedom of Information (FOI) decision that you disagree with, you can seek a review of the original decision. The review will be carried out by a different decision maker, usually someone at a more senior level.

You must apply for an IR within 30 calendar days of being notified of the decision or charge, unless we agree to extend your time. You should contact us if you wish to seek an extension.

We are required to make an IR decision within 30 calendar days of receiving your application. If we do not make an IR decision within this timeframe, then the original decision stands.

Review by the Australian Information Commissioner (IC)

The Office of the Australian Information Commissioner (OAIC) is an independent office who can undertake an ER of our decision under the FOI Act. The IC can review access refusal decisions, access grant decisions, refusals to extend the period for applying for an IR, and IR decisions.

If you are objecting to a decision to refuse access to a document, impose a charge, or a refusal to amend personal information, you must apply in writing to the IC within 60 calendar days of receiving our decision.

Third parties

If you are a third party objecting to a decision to grant someone else access to your information, you must apply to the IC within 30 calendar days of being notified of our decision to release your information. Further assistance is located [here](#).

Do I have to go through the internal review process?

No. You may apply directly to the OAIC for an ER by the IC.

If I apply for an internal review, do I lose the opportunity to apply for an external review?

No. You have the same ER rights of our IR decision as you do with our original decision. This means you can apply for an ER of the original decision or of the IR decision.

Do I have to pay for an internal review or external review?

No. Both the IR and ER are free.

How do I apply?

Internal review

To apply for an IR of the decision of either Finance or the Minister, you must send your review in writing. We both use the same contact details, and you must send your review request in writing.

In your written correspondence, please include the following:

- a statement that you are seeking a review of our decision;
- attach a copy of the decision you are seeking a review of; and
- state the reasons why you consider the original decision maker made the wrong decision.

Email: xxx@xxxxxxxx.xxx.xx

Post: The FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

External review (Information Commissioner Review)

For an ER, you must apply to the OAIC in writing. The OAIC ask that you commence a review by completing their online form [here](#).

Your application must include a copy of the notice of our decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Email: xxxxx@xxxx.xxx.au

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

The IC's enquiries phone line is 1300 363 992.

Can I appeal the Information Commissioner's external review decision?

Yes. You can appeal the Information Commissioner's ER decision to the Administrative Appeals Tribunal (AAT).

There is a fee for lodging an AAT application (as at 19 October 2022 it is \$1,011).

Further information is accessible [here](#).

The AAT's number is 1800 228 333.

Complaints

Making a complaint to the Office of the Australian Information Commissioner

You may make a written complaint to the OAIC about actions taken by us in relation to your application.

Further information on lodging a complaint is accessible [here](#).

Investigation by the Commonwealth Ombudsman

The Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be, or has been, investigated by the IC, the Ombudsman will consult with the IC to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. You will be notified in writing if your complaint is transferred.

Complaints to the Ombudsman should be made online [here](#).

The Ombudsman's number is 1300 362 072.