



OFFICE OF THE PRIME MINISTER

FOI Reference: PM/22/005

To PM

Email: foi+request-9230-37c8d664@righttoknow.org.au

Dear PM

Thank you for your Email dated 5 August 2022 regarding a request to access documents under the *Freedom of Information Act 1982* (the Act).

Terms of FOI request

You set out your FOI request in the following terms:

I seek access to the Prime Minister's Question Time briefs for the Prime Minister's participation in Question Time on 27 July – 4 August 2022.

This request includes the documents in the red and white folders taken by the PM into the chamber for QT.

For the avoidance of doubt, I am seeking access to documents held by the Prime Minister and his Office broader than those documents which would be held by the Department of Prime Minister and Cabinet and includes any documents created or amended by the Prime Minister's office for Question time as well as documents containing annotations or highlighting by the Prime Minister or his staff.

I have understood that you are seeking access to records held by the Office of the Prime Minister (the Office) and not to briefs provided to the Office by the Department of the Prime Minister and Cabinet.

Authorised decision-maker

I am authorised to make a decision in this matter on the Prime Minister's behalf.

Material taken into account

In reaching my decision I had regard to:

- the terms of your request
- the records subject to the terms of your request
- the FOI Act
- the Guidelines issued by the Information Commissioner, under section 93A of the Act (Guidelines)

Decision

I have decided the documents you have requested are not official documents of a Minister and there is no right of access under the FOI Act.

Reasons for decision

I have considered the right of access within section 11(1)(b) of the FOI Act which extends to an 'official document of a Minister'. 'Official document of a Minister' is defined in section 4 of the FOI Act as follows (with emphasis):

- *a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document that relates to the affairs of an agency...*

Thus, for a document to be an official document of a Minister and subject to the FOI Act, it must:

- be in the possession of the Minister;
- held in their capacity as a Minister; and
- relate to the affairs of an agency.

"Agency" is defined to mean a Department, a prescribed authority or a Norfolk Island authority (s 4).

In this context, I note the examples set out in the FOI Guidelines¹ that discuss documents held by a Minister but that do not relate to the affairs of an agency.

While I am satisfied the documents requested would be in the possession of the Minister and held in his capacity as a Minister, I am not satisfied they relate to the affairs of an agency.

In considering what would relate to the affairs of an agency I have had regard to the relationship between the Office and the Australian Public Service (APS). The Australian Public Service Commission has published a paper that discusses 'Working with Ministers'². The paper explains that the role of the APS is to assist the government of the day to deliver its policies and programmes, and the APS does this by providing impartial advice while considering a broad range of governance, policy and process matters. This occurs through a deliberative process whereby both parties engage in a working relationship.

Here, the documents were prepared by the personal staff of the Prime Minister and were not intended to be, nor were they, shared or provided to the department (or any other agency). Further, there was no deliberation between the Office and the department with respect to the requested documents

Taking into consideration these finding of fact, I am satisfied that you are not seeking access to 'an official document of a Minister' as defined under section 4 of the FOI Act. Accordingly, I am satisfied that your request falls outside the scope of the FOI Act.

¹ Paragraph 2.50 of the FOI Guidelines

² Commonwealth of Australia, Australian Public Service Commission, *Working with Ministers*, <https://www.apsc.gov.au/publication/working-ministers>

Review rights

If you disagree with the decision you may apply for an Information Commissioner review within 60 days from the date of this letter. The FOI Act does not provide for internal review of a decision by Minister.

More information about review rights and how to apply is available at:
www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Gory', written in a cursive style.

Simona Gory
Senior Legal Adviser
5 September 2022