



Our reference: FOIREQ22/00292

Attention: Verity Pane

By email: foi+request-9263-de6e72ff@righttoknow.org.au

Your Internal Review Application – FOIREQ22/00292

Dear Verity Pane,

I am writing to advise you of my decision in response to your application for internal review of the decision made on 7 September 2022 (FOIREQ22/00223).

Original FOI Decision

You lodged an FOI request on 12 August 2022. In your request you sought access to the following:

“I want copy of the s 15AB application form (and the email it was sent in) in RQ22/02493.”

On 7 September 2022, the OAIC made a decision in relation to your request. Two documents were identified as being within the scope of your request. You were granted access to both documents in full.

Internal review

On 7 September 2022 you sought internal review of this decision stating:

“My foi was for ‘copy of the s 15AB application form (and the email it was sent in) in RQ22/02493.’

FOIREQ22/00223 provided copy of the webform but not the email it was received in by the OAIC.

Internal review required as the OAIC does not just have the webform magically appear - it is sent as a PDF by email by another agency. The email is important as it is the only record that gives the date and time the form was received by the OAIC.”

Material taken into account

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

- your original freedom of information request FOIREQ22/00223 dated 12 August 2022
- the decision of the delegate dated 7 September 2022 the subject of this internal review, and accompanying schedule and documents
- your request for internal review dated 7 September 2022
- the FOI Act, and
- the FOI Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

Internal Review Decision

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

An internal review decision is a ‘fresh decision’ made by a person other than the person who made the original decision (s 54C of the *Freedom of Information Act 1982* (the FOI Act)). I have had regard to, but not relied on, the delegate’s original Freedom of Information (FOI) decision.

I have decided to set aside the decision made on 7 September 2022.

I have identified one document within the scope of your request – the 15AB extension of time Smartform which was submitted on-line, automatically uploaded into Resolve. I have decided to provide you with full access to this document, and it is attached. I note that you were previously provided with access to this material pursuant to your original request for access, FOIREQ22/00223.

I have decided to refuse your request for access to ‘the email the webform was received in by the OAIC’ under s 24A because I am satisfied that the document does not exist.

The reasons for my decision are as follows.

Searches undertaken

Section 24A requires that an agency take ‘all reasonable steps’ to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

The FOI Guidelines at [3.89] explain:

“Agencies and ministers should undertake a reasonable search on a flexible and common-sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency’s operating environment.

At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- *the subject matter of the documents*
- *the current and past file management systems and the practice of destruction or removal of documents*
- *the record management systems in place*
- *the individuals within an agency who may be able to assist with the location of documents, and*
- *the age of the documents”*

I note that in your internal review request, you stated the following:

“My foi was for 'copy of the s 15AB application form (and the email it was sent in) in RQ22/02493.’

FOIREQ22/00223 provided copy of the webform but not the email it was received in by the OAIC.

Internal review required as the OAIC does not just have the webform magically appear - it is sent as a PDF by email by another agency. The email is important as it is the only record that gives the date and time the form was received by the OAIC.”

I note that in processing the original decision the subject of this internal review, a member of the OAIC Legal Services team sent a search and retrieval request to the FOI Regulatory line area, who advised that, due to the s 15AB application form being sent online via the SmartForm on the OAIC’s website, there was no email received.

In processing this internal review, a staff member of the OAIC Legal Services team sought to re-confirm with the line area the existence of the email the subject of your internal review request. The line area stated that the s 15AB application form the subject of your request was received via the OAIC’s SmartForm application (available at: <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/extension-of-time-for-processing-requests>). The line area confirmed that when an agency submits an extension of time request via the SmartForm, the submission, any attachments, and the form data are received via the OAIC’s case management system *Resolve* and are not received by the OAIC via email. Due to this,

it appears that the email you are requesting in this internal review application does not exist.

In light of the above, I am satisfied that all reasonable searches have been undertaken to locate documents within the scope of your request, and that no document identifiable as 'an email in which the webform was received' exists.

Information related to your request

In your request for internal review you state that you are interested in the time and date that the s 15AB form the subject of your request was received by the OAIC. I have decided to provide that information to you administratively.

After further consultation with the line area and on reviewing the form data of the relevant document, it appears that the SmartForm was submitted to the OAIC on 11 July 2022 at 5:22:14pm, automatically uploading to Resolve shortly thereafter.

Conclusion

For the above reasons, I set aside the original decision made in FOIREQ22/00223, and substitute my decision in which I have decided to grant you full access to one document and refuse access to the other under s 24A of the FOI Act on the ground that the document does not exist.

Please see the following page for information about your review rights.

Yours sincerely

Caren Whip

General Counsel
14 October 2022

If you disagree with my decision

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 30 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.

s 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>
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Alternatively, you can submit your application to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Or by email to foi@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 foi@oaic.gov.au. More information is available on the [Access our information](#) page on our website.