



Our reference: FOIREQ22/00348

Attention: Mr Steven Roddis

By Email: foi+request-9399-907e2ce3@righttoknow.org.au

Your internal review application– FOIREQ22/00348

Dear Mr Roddis

I am writing to advise you of my decision in response to your application for internal review of a decision made on 26 October 2022 under the *Freedom of Information Act 1982* (FOI Act), by the original decision maker Ms Emily Elliott.

An internal review is a fresh decision made by a person other than the person who made the original decision (s 54C of the FOI Act). All materials available to the original decision maker have been made available to me. I have also undertaken further consultation before making my decision.

Scope of your application for internal review

On 25 September 2022 you sought access on the following terms:

*"In similar vein to
https://www.righttoknow.org.au/request/9038/response/26878/attach/7/FOI%2021.2%201800%20Decision%20Document.pdf?cookie_passthrough=1*

Please provide a summary of how many times the string: "api.www.optus.com.au" or "http://api.www.http://optus.com.au" or "https://api.www.optus.com.au" are mentioned or cited across all OAIC records and communications since January 2016

On the same date, you wrote to the OAIC clarifying your request as follows:

Correction:

please substitute "http://api.www.http://optus.com.au" with "http://api.www.optus.com.au"

On 25 October 2022 the OAIC provided you with a decision in FOIREQ22/00303. Your request was refused under section 24A of the FOI Act on the basis that all reasonable steps had been taken to identify relevant documents and I am satisfied the documents do not exist or cannot be found. The original decision maker also decided that a document could not be produced under s17 of the FOI Act.

On 26 October 2022, you applied for internal review of the original decision:

“Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Office of the Australian Information Commissioner's handling of my FOI request 'Optus API mentions'.

Specifically emails were not searched because OAIC determined in their response to my FOI request:

"It is not possible to do a global search of OAIC email accounts since 2016 to the date of your request. Each individual officer would need to conduct a search of their individual email accounts. Each officer who left the OAIC would require engagement with OAIC's ICT provider to conduct the search. "

"To create a document with the information you have requested would require a staff member to manually review every email sent or received by the OAIC, and every document created or received by the OAIC, since 2016 up until the date of your FOI request, and manually record the frequency of the occurrences of the terms contained in your request in a new document."

I posit that all reasonable steps were not taken to find the documents requested because:

The implication of what was stated above is that OAIC cannot view their emails without the cooperation of "individual officer would need to conduct a search of their individual email accounts".

Which would mean OAIC would have no reasonable eDiscovery system in place for email.

In my opinion searching OAIC's email corpus has been wrongly determined to be a manual process...”

I have taken the above information into consideration in making my internal review decision.

Decision

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

I have decided to affirm the decision made in FOIREQ22/00303 to refuse your request under s 24A of the FOI Act on the basis that all reasonable steps have been taken to identify relevant documents and I am satisfied the documents do not exist or cannot be found. I have also affirmed that a document cannot be produced under s17 of the FOI Act in answer to your request.

Reasons for decision

Material taken into account

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

- your freedom of information request FOIREQ22/00303 and subsequent correspondence, as outlined above,
- your application for internal review dated 26 October 2022,
- correspondence and discussions with relevant OAIC line areas regarding your request,
- searches undertaken in the course of processing your original request
- additional searches undertaken by the OAIC's IT provider, the Department of Employment and Workplace Relations (DEWR) in the course of processing this internal review,
- the FOI Act, in particular s 24A and s 17 of the FOI Act,
- relevant case law, and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

Whether reasonable steps were taken to find documents – s 24A

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.

Section 24A provides as follows:

(1) An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document; 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

The FOI Guidelines state at [3.89]

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 or the minister's office. 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 system and the practice of destruction or removal of documents*
- *the record management system in place*
- *the individuals within the agency who may be able to assist with the location of documents, and*
- *the age of the documents.*¹

Searches undertaken

Searches undertaken in the course of processing your original request

As previously communication to you, in the course of processing your original request, a member of the OAIC's Legal Services team sought advice from a member of the Privacy Regulation and Strategy team regarding whether any summary document containing the key terms within the scope of your request would be in existence. They advised that no such document existed in their records and confirmed that no other area of the OAIC in their view would hold such a document.

In order to undertake a search of the OAIC records more broadly, a search and retrieval request was sent to the OAIC's Information Management & Governance

¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* [3.89], footnotes omitted.

Officer to search for any documents held within the OAIC's records containing any of the key terms specified within your request.

Searches were undertaken across the OAIC's record storage systems Resolve (including Resolve summary fields), Content Manager, as well as network drives for the following terms specified in your request.

- o "api.www.optus.com.au"
- o "http://api.www.optus.com.au"
- o "https://api.www.optus.com.au"

These searches failed to locate any documents that contained any of the above terms. We noted that there were a number of limitations to the searches conducted:

- Not all documents are able to be searched for content (for instance, PDF documents cannot be searched for content if they are not saved in a readable format, so unless the search terms appear in the title, documents in 'unreadable' formats will not appear in searches undertaken.
- It is not possible to do a global search of OAIC email accounts since 2016 to the date of your request. Each individual officer would need to conduct a search of their individual email accounts. Each officer who left the OAIC would require engagement with OAIC's ICT provider to conduct the search.

While I note these search limitations, having regard to the subject matter of the documents you have requested, being a document that contains a summary of the times your requested key terms have been "mentioned or cited across all OAIC records and communications since January 2016", the fact that not a single document containing any of your requested key terms was able to be located, as well as the above-outlined advice from the relevant Privacy line area regarding their belief that no such document would exist, I remain satisfied that the documents are not held by the OAIC internally.

Additional searches undertaken for this internal review

Noting the concerns expressed by you in your request for internal review regarding the email searches undertaken, in undertaking this internal review, the Department of Employment and Workplace Relations (DEWR) ICT Service Desk (**Service Desk**) was contacted by the OAIC to confirm as to whether they would be able to conduct searches across all OAIC mailboxes, including those of all past and present

employees.² The DEWR's IT Forensics team (**Forensics team**) conducted searches for emails containing addresses:

- "api.www.optus.com.au"
- "http://api.www.optus.com.au"
- <https://api.www.optus.com.au>

The Forensics team completed searches across all OAIC staff members mailboxes, dating back to January 2016 to which they had access.

On 3 November 2022 the Forensics team informed the OAIC that they had completed searches across all OAIC staff member mailboxes dating back to January 2016 that they had access to, and that no additional documents were able to be located containing any of your search terms. The only emails that were located was the emails containing your initial FOI request, which are outside the scope of your request.

Regarding limitations on the searches conducted, The Forensics team advised that searches were only able to be conducted on email accounts stored within the Outlook 365 environment, which they advised would only be the email accounts of individuals working for OAIC in April 2022.

On 7 November 2022, the Forensics team contacted us informing that they were able to identify a backup of emails of departed OAIC staff held by them, and that they would commence extracting this data for analysis and searching.

On 10 November 2022 they informed us that the data had been extracted, and that the total data was 3.58 terabytes. The Forensics team have attempted to complete a search of this data but have run into unexcepted technical difficulties and delays in processing this data and as at 25 November 2022, have not been able to complete these searches. However, in my view further searches of these backup files is not reasonable in the circumstances.

As per the FOI guidelines at [3.93]: "*...if an agency or minister is aware that its backup system may contain relevant documents not otherwise available...a search of the backup system may be required.*" I note that extensive searches have already been undertaken to find documents within the scope of your request, with over 130 OAIC

² The Department of Education and Workplace Relations provides the OAIC's IT Services. We have previously been advised that the OAIC's previous IT provider, the Human Rights Commission, do not hold a backup of the email accounts of OAIC staff members. This material has been migrated to DEWR.

mailboxes having been searched in full and not a single reference to any of the terms in your FOI request able to be found.

In light of this, and in light of the earlier searches carried out, as detailed above, I am satisfied that the OAIC does not hold any documents within the scope of your request. I am satisfied that all reasonable searches have been conducted in response to your FOI request, and the documents you are seeking do not exist or cannot be found.

Document created under s 17 of the FOI Act

As I am satisfied that the documents do not exist or cannot be found, I have considered whether the OAIC may produce a document under s 17 of the FOI Act containing the information that you have requested. Relevantly, the FOI Guidelines at [3.212] state that the obligation to produce a written document arises if:

- *the agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and*
- *producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s 17(2)).*

As discussed above, no documents were able to be located that contained any of the terms the subject of your request across these systems

Based on this advice, it appears that it is not possible to use any computer system or equipment ordinarily available to the OAIC to generate a report with the information that you have requested, due to us being unable to locate any documents containing any of the terms the subject of your request.

Conclusion

Please see the following page for information about your review rights and information about the OAIC's disclosure log.

Yours sincerely

Emma Liddle
Director, Legal

25 November 2022

If you disagree with my decision

Further 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 60 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.

Section 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=ICR10>

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Or by email to foidr@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.

Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

Due to no documents being located, there are no documents to publish on the disclosure log.