



Our reference: FOIREQ22/00317

Attention: Verity Pane

By email: foi+request-9425-6b356fef@righttoknow.org.au

Your Freedom of Information Request – FOIREQ22/00317

Dear Verity Pane

I refer to your request for access to documents made under the Freedom of Information Act 1982 (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 1 October 2022.

In your request you seek access to the following:

'I want copy of the documents released in FOIREQ22/00241 updated as at 1 October.'

On 5 October 2022 we wrote to you seeking clarification on your scope as follows:

'The OAIC's decision in FOIREQ22/00241 was an Internal Review of the decision made in FOIREQ22/00190. The documents released under both of these decisions were the same, however the Internal Review released these same documents with a number of redactions removed.'

We therefore interpret your request to be for:

- 1. The OAIC Organisation Chart; and*
- 2. the document generated under s 17 of the FOI Act for FOIREQ22/00241,*

with the details of both documents updated as at 1 October 2022. As you have requested a copy of the documents as they were released, we have interpreted this to mean that you are requesting the redacted versions of these documents as they were released for FOIREQ22/00241, but with non-redacted details updated for currency.

Please advise us by COB Friday 7 October 2022 if this interpretation is incorrect.'

We did not receive a response to this email and accordingly we have processed your request based on this interpretation.

Reasons for Decision

Material taken into account

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

- your freedom of information request dated 1 October 2022,
- your previous request FOIREQ22/00241,
- the document at issue,
- the FOI Act, in particular s 17 and s 24A,
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines), and
- relevant case law.

Decision

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

I have identified **1 document** within the scope of your request, created under s 17 of the FOI Act. I have decided to release this document to you in part.

Whether reasonable steps taken to find documents – s 24A

Section 24A of the FOI Act requires the OAIC to 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:

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

In processing your FOI request, the following line areas of the OAIC conducted reasonable searches for documents relevant to your request:

- People and Culture

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's case management system - Resolve
- the OAIC's document holding system – Content Manager
- OAIC's email system
- general computer files

Having consulted with the relevant line area and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request, and that no documents were able to be found within the scope of your request.

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.

Document created under s 17 of the FOI Act

As I am satisfied that the documents you have requested 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)).*

Relevant to your request, in the Full Federal Court case of *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67, the Court found at [43]-[44] that the reference in section 17(1)(c)(i) to ‘computer or other equipment that is ordinarily available’ means “...a functioning computer system including software, that can produce the requested document without the aid of additional components which are not themselves ordinarily available ...” The Court further observed that “[T]he computer or other equipment ... must be capable of functioning independently to collate or retrieve stored information and to produce the requested document” [44]. Similarly, in the recent case of *YH and Australian Communications and Media Authority (Freedom of information)* [2021] AICmr 64, it was found that a ‘manual process’ of locating the requested information in number of other documents and then manually collating this information in a new document goes beyond what s 17 requires, and therefore s 17 does not apply in these circumstances (see [30]-[33]).

Consideration

I note that in your current FOI request you refer to the documents released to you in your earlier decision FOIREQ22/00241. There two documents released to you were titled as follows:

1. “OAIC Organisation Chart as 1 April 2022”, and
2. “Document generated under s 17 of the FOI Act”

Regarding Document 1, having regard to the requirements of s 17 as outlined above, it is not possible for the OAIC to use a computer system ordinarily available to us to generate an updated version of this document, as per your request. Noting, as

explained above, that no updated version of this document appears to exist, the only way in which to create this document would be through manually collating the information. I am therefore satisfied that to create such a document would require manual intervention beyond the obligation created under s 17 of the FOI Act.

Regarding Document 2, an updated version of this document has been generated using a computer system ordinarily available to the OAIC, as per your request.

Access to edited copies with irrelevant and exempt matter deleted (s 22)

I have found that the document released to you contains irrelevant material that is outside the scope of your request.

s 22(1)(b)(ii) of the FOI Act provides that an agency may prepare an edited copy of a document by deleting information that is exempt or that would reasonably be regarded as irrelevant to the request.

The FOI Guidelines explain at [3.54] that a request should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used.

As outlined above, I have interpreted your request as being for *“the redacted versions of these documents as they were released for FOIREQ22/00241, but with non-redacted details updated for currency...”*. In line with this interpretation, the information that was previously exempted in FOIREQ22/00241 is irrelevant to your request.

On this basis, I have prepared the document for release by removing the irrelevant and out of scope material in accordance with s 22(1)(a)(ii) of the FOI Act.

Conclusion

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

Yours sincerely

Margaret Sui
Senior Lawyer

31 October 2022

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

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=ICR_10

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 FOIDR@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.

I have made a decision to publish the documents subject to your request on the OAIC's disclosure log.