



Australian Government

Australian Public Service Commission

Velan

By email: foi+request-9539-af347b65@righttoknow.org.au

Our reference: LEX 362

Dear Velan

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on 7 November 2022 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au

Documents relevant to your request

3. You requested access to documents in the following terms:

“Under the FOI Act, I request access to any and all briefing documents prepared for the Australian Public Service Commissioner for use at the November 2022 session of Budget Estimates relating to the Commonwealth Ombudsman's decision to investigate the manner in which Kate McMullan conducted an investigation into allegations of misconduct by senior members of the staff of the Federal Court under the Public Interest Disclosure Act 2013.”

Decision on your FOI request

4. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
5. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents meeting the description of what you have asked for can be found or exist.
6. As such, I refuse your request for access to documents pursuant to section 24A of the FOI Act.

Reasons for decision

Section 24A – documents that cannot be found or do not exist

7. Subsection 24A(1) of the FOI Act provides:

- (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 or Minister's possession but cannot be found; or
 - (ii) does not exist.
8. The Office of the Australian Information Commissioner (OAIC) has issued guidelines pursuant to section 93A of the FOI Act. At paragraphs 3.88 to 3.93 of these guidelines, the OAIC provides guidance as to the meaning of the term 'all reasonable steps' in subsection 24A(1).
9. Having regard to OAIC's guidance, I have taken into account the subject matter of your request.
10. I am currently the acting Assistant Commissioner of the Integrity, Performance and Employment Policy Group in the Commission and this Group is responsible for liaising with the Commonwealth Ombudsman on this matter.
11. I can confirm that no briefing materials were prepared for use at the November 2022 session of Budget Estimates which related to 'the Commonwealth Ombudsman's decision to investigate the manner in which Kate McMullan conducted an investigation into allegations of misconduct by senior members of the staff of the Federal Court under the *Public Interest Disclosure Act 2013*.'
12. Accordingly, I have decided to refuse your request for access under section 24A of the FOI Act.

Contacts

13. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3500 or by email at foi@apsc.gov.au

Review rights

14. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A**.

Yours sincerely



Clare McLean

Authorised FOI decision maker

7 December 2022

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au
Post: The FOI Officer
 Australian Public Service Commission
 B Block, Treasury Building
 GPO Box 3176
 Parkes Place West
 PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application:**

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au