



Australian Government

Department of Finance

Reference: FOI 22/107
Contact: FOI Team
E-mail: foi@finance.gov.au

C Drake
Right to Know

By email only: foi+request-9564-59e12fbc@righttoknow.org.au

Dear Mr Drake

Freedom of Information Request – FOI 22/107

On 13 November 2022, the Department of Finance (Finance) received your email requesting access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to “the comprehensive list of all .gov.au domain names that can be accessed by Australian taxpayers on the internet.” Your complete request is at **Attachment A**.

On 15 November 2022, you responded providing further information regarding both this request (FOI 22/107) and your internal review request of a charges decision (FOI 22/85). This additional information is at **Attachment B**.

On 16 November 2022, you responded providing further information regarding your request. This additional information is at **Attachment C**.

On 22 November 2022, Finance sent an acknowledgement of request email, which included information on charges, publication to the disclosure log and Finance’s policy to exclude junior officer contact details, signatures and mobile phone numbers.

On the same day you responded. Your response is at **Attachment D**.

On 30 November 2022, Finance sought to clarify your request, noting that your previous FOI requests (FOI 22/54 and FOI 22/85) were seeking the .gov.au domain name ‘master list’. Finance considered that in this request (FOI 22/107), you were not making the exact same request, but instead seeking any publicly available list of .gov.au domain names.

The email went on to advise that the Department of Finance does not hold any documents, which are not already publicly available, and provided links below to all publicly available information that may contain the information that you are seeking.

This correspondence is at **Attachment E**.

On 5 December 2022, you responded advising that your request is for “the comprehensive list of all .gov.au domain names.” This response is at **Attachment F**.

The purpose of this letter is to provide you with notice of my decision under the FOI Act.

Interpretation of Request

Following the correspondence that has been sent and received between the FOI Team and you, I now consider that this request (FOI 22/107) is the same, in substance, as your previous request (FOI 22/54).

FOI 22/54 Decision

On 23 September 2022, Finance notified you of the decision maker's access refusal decision, made on the basis that the document is exempt in full under section 45 of the FOI Act. A copy of this decision letter is at **Attachment G**.

Internal Review of FOI 22/54 Decision

On 24 October 2022, Finance notified you of the new decision maker's decision to affirm the FOI 22/54 decision, being to find that the Master List is exempt in full under section 45 of the FOI Act.

The next avenue for review of the FOI 22/54 decision and the subsequent internal review decision is an external review by the Office of the Australian Information Commissioner (OAIC). The process for review and your appeal rights are set out at **Attachment H**.

Current Decision (FOI 22/107)

I have decided to refuse to release the Master List as its disclosure would found an action, by .au Domain Administration Ltd (auDA) and Identity Digital Australia Pty Ltd (Identity Digital) (formerly known as Afilias Australia Pty Ltd) for breach of confidence.

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

- the terms of your FOI request and subsequent correspondence;
- the content of the document that fell within the scope of your request;
- the Sponsorship Agreement between auDA and Finance;
- the Registry-Registrar Agreement between Identity Digital and Finance;
- consultation with auDA and Identity Digital and the joint submissions made by those parties;
- the relevant provisions of the FOI Act;
- relevant FOI case law (referenced throughout the decision):
 - 'XF' and Australian Radiation Protection and Nuclear Safety Authority [2021] AICmr 21 (4 June 2021).
 - 'WW' and Australian Sports Commission (Freedom of information) [2021] AICmr 11 (9 April 2021).
 - 'WS' and Australian Securities and Investments Commission (Freedom of information) [2021] AICmr 6 (18 February 2021).
 - 'VO' and Northern Australia Infrastructure Facility (Freedom of information) [2020] AICmr 47 (11 September 2020).
 - 'RG' and Department of the Prime Minister and Cabinet (Freedom of information) [2019] AICmr 69 (9 October 2019).
 - Paul Farrell and Department of Home Affairs (Freedom of information) (No. 4) [2019] AICmr 40 (13 June 2019).
 - Callejo and Department of Immigration and Citizenship [2010] AATA 244 (8 April 2010).
 - Petroulias and Ors and Commissioner of Taxation [2006] AATA 333; (2006) 62 ATR 1175 (30 March 2006).

- B and Brisbane North Regional Health Authority [1994] QICmr 1.
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Exemptions

Breach of confidence – section 45

Section 45 of the FOI Act provides:

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

The FOI Guidelines provide:

[5.158] A breach of confidence is the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence. The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.

The FOI Guidelines further provide:

[5.159] To found an action for breach of confidence (which means section 45 would apply), the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment.

I find that the Master List is exempt in full under section 45 of the FOI Act. I consider that the five criteria listed in the FOI Guidelines at 5.159 are satisfied, for the same reasons as provided in Finance's decision letter for FOI 22/54. Given that I support the reasoning provided in that letter, I do not consider it necessary to repeat that information here.

A copy of the decision letter for FOI 22/54 is at **Attachment G**.

Authorised decision-maker

I am authorised by the Secretary of Finance to grant or refuse access to documents.

Charges

I have decided that a charge is not payable in this matter.

Review and appeal rights

You are entitled to request an internal review or an external review by the Office of the Australian Information Commissioner (OAIC) of my decision. The process for review and appeal rights is set out at **Attachment H**.

If you have any questions in regards to this request, please contact the FOI Team on the above contact details.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M V' followed by a horizontal line.

Marc Vickers
Assistant Secretary
Governance and Procurement | Information and Communications Technology
Department of Finance
9 December 2022



Australian Government

Department of Finance

Freedom of Information – Your Review Rights

If you disagree with a decision made by the Department of Finance (Finance) or the Minister for Finance (Minister) under the *Freedom of Information Act 1982* (the FOI Act) you can have the decision reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of the documents that has not been agreed to by Finance or the Minister, or if your application to have your personal information amended was not accepted. There are two ways you can seek a review of our decision: an internal review (IR) by Finance or the Minister, or an external review (ER) by the Australian Information Commissioner (IC).

Internal Review (IR)

If, Finance or the Minister (we/our), makes a Freedom of Information (FOI) decision that you disagree with, you can seek a review of the original decision. The review will be carried out by a different decision maker, usually someone at a more senior level.

You must apply for an IR within 30 calendar days of being notified of the decision or charge, unless we agree to extend your time. You should contact us if you wish to seek an extension.

We are required to make an IR decision within 30 calendar days of receiving your application. If we do not make an IR decision within this timeframe, then the original decision stands.

Review by the Australian Information Commissioner (IC)

The Office of the Australian Information Commissioner (OAIC) is an independent office who can undertake an ER of our decision under the FOI Act. The IC can review access refusal decisions, access grant decisions, refusals to extend the period for applying for an IR, and IR decisions.

If you are objecting to a decision to refuse access to a document, impose a charge, or a refusal to amend personal information, you must apply in writing to the IC within 60 calendar days of receiving our decision.

Third parties

If you are a third party objecting to a decision to grant someone else access to your information, you must apply to the IC within 30 calendar days of being notified of our decision to release your information. Further assistance is located [here](#).

Do I have to go through the internal review process?

No. You may apply directly to the OAIC for an ER by the IC.

If I apply for an internal review, do I lose the opportunity to apply for an external review?

No. You have the same ER rights of our IR decision as you do with our original decision. This means you can apply for an ER of the original decision or of the IR decision.

Do I have to pay for an internal review or external review?

No. Both the IR and ER are free.

How do I apply?

Internal review

To apply for an IR of the decision of either Finance or the Minister, you must send your review in writing. We both use the same contact details, and you must send your review request in writing.

In your written correspondence, please include the following:

- a statement that you are seeking a review of our decision;
- attach a copy of the decision you are seeking a review of; and
- state the reasons why you consider the original decision maker made the wrong decision.

Email: foi@finance.gov.au

Post: The FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

External review (Information Commissioner Review)

For an ER, you must apply to the OAIC in writing. The OAIC ask that you commence a review by completing their online form [here](#).

Your application must include a copy of the notice of our decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Email: FOIDR@oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

The IC's enquiries phone line is 1300 363 992.

Can I appeal the Information Commissioner's external review decision?

Yes. You can appeal the Information Commissioner's ER decision to the Administrative Appeals Tribunal (AAT).

There is a fee for lodging an AAT application (as at 19 October 2022 it is \$1,011).

Further information is accessible [here](#).

The AAT's number is 1800 228 333.

Complaints

Making a complaint to the Office of the Australian Information Commissioner

You may make a written complaint to the OAIC about actions taken by us in relation to your application.

Further information on lodging a complaint is accessible [here](#).

Investigation by the Commonwealth Ombudsman

The Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be, or has been, investigated by the IC, the Ombudsman will consult with the IC to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. You will be notified in writing if your complaint is transferred.

Complaints to the Ombudsman should be made online [here](#).

The Ombudsman's number is 1300 362 072.