



Australian Government
Attorney-General's Department

Our ref: FOI23/005; CM23/169

9 January 2023

Not Rex Patrick
By email: foi+request-9678-db4013f3@righttoknow.org.au

Dear Applicant

Freedom of Information Request FOI23/005 – Decision letter

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Office (the office) which was subsequently transferred to the Attorney-General's Department (the department).

Your request

On 9 December 2022, you submitted the following FOI request to the Attorney-General:

*I am seeking all letters between you and the Cabinet Secretary.
I am not seeking draft or duplicates of the above documents.*

On 20 December 2022, the department acknowledged your request.

A decision in relation to your request is due on 9 January 2023.

My decision

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

I have identified 3 documents that fall within the scope of your request. I did this by making inquiries of staff likely to be able to identify relevant documents and arranging for comprehensive searches of relevant departmental electronic and hard copy holdings.

In making my decision regarding access to the relevant documents, I have taken the following material into account:

- the terms of your request
- the content of the documents identified as within scope of your request
- the provisions of the FOI Act, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

I have decided to refuse access to all 3 documents.

Additional information

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

The statement of reasons at **Attachment B** sets out the reasons for my decision to refuse access to certain material to which you have requested access.

Questions about this decision

If you wish to discuss this decision, the FOI case officer for this matter is Leonie, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S. Christensen', with a long horizontal line extending to the right.

Sarah Christensen
Director
Strategy and Governance Branch

Attachments

Attachment A: Review rights
Attachment B: Statement of reasons



Australian Government
Attorney-General's Department

Attachment A - FOI Review rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter, and be lodged in one of the following ways:

email: foi@ag.gov.au

post: Freedom of Information and Privacy Section
Strategy and Governance Branch
Attorney-General's Department
3-5 National Circuit BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of the decision letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.



Attachment B – Statement of reasons – FOI23/005

This document provides information about the reasons I have decided not to disclose certain material to you in response to your request for documents under the *Freedom of Information Act 1982* (FOI Act).

Exemptions

An agency or minister is not required to give access to a document or part of a document that is exempt from disclosure under Division 2 of Part IV of the FOI Act. Exempt documents in Division 2 of Part IV include documents subject to the Cabinet exemption (section 34).

This exemption is not subject to an overriding public interest test. Accordingly, where a document meets the criteria to establish the exemption, it is exempt and the decision-maker is not required to weigh competing public interests to determine if the document should be released.

Brief information about the exemptions I have applied when making a decision about disclosure of each of the documents to which you have requested access is set out below. Additional information about the exemptions can be obtained from the FOI Guidelines which are available on the Office of the Australian Information Commissioner's website at www.oaic.gov.au.

Section 34: Cabinet documents

Section 34 of the FOI Act states that:

- (1) *A document is an exempt document if:*
 - (a) *both of the following are satisfied:*
 - (i) *it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*
 - (ii) *it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or*
 - (b) *it is an official record of the Cabinet; or*
 - (c) *it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or*
 - (d) *it is a draft of a document to which paragraph (a), (b) or (c) applies.*
- (2) *A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.*
- (3) *A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.*

Section 34(2) provides that a document is exempt from disclosure to the extent that it contains a copy or part of or an extract from a document that is, itself, exempt from disclosure for one of the reasons specified in s 34(1). As explained in the FOI Guidelines (paragraph 5.71), in practice this means a document that comprises or contains a copy of, part of, or an extract from a Cabinet submission, a Cabinet briefing or an official record of the Cabinet. A copy or extract should be a quotation from, or exact reproduction of, the Cabinet submission, official record of the Cabinet or the Cabinet briefing.

Section 34(3) provides an exemption for documents that refer to a Cabinet meeting date or Cabinet document reference number contains an extract from a Cabinet document. It may therefore be deleted from an edited copy of the document where this is reasonably practicable (s 22). As noted in the FOI Guidelines at paragraph 5.72, although such information is generally not sensitive, s 34 does not require that the decision-maker be satisfied that disclosure would cause damage. It is enough that the document in question quotes any information from a document described in s 34(1).

Based on my assessment of the relevant documents and advice provided to me by officers with responsibility for matters to which the documents relate, I am satisfied that the content of all three documents would reveal a Cabinet deliberation or decision which has not been officially disclosed, and one document contains an extract from a document to which subsection 34(1) applies. Accordingly, I have decided that this information is exempt pursuant to subsections 34(2) and 34(3) of the FOI Act.