



OFFICE OF THE PRIME MINISTER

FOI Reference: PM/23/025

To H (Right to Know)

By email: foi+request-9983-2a0c32eb@righttoknow.org.au

Dear H

Thank you for your email dated 24 February 2023 regarding a request to access documents under the *Freedom of Information Act 1982* (the Act).

Terms of FOI request

You set out your FOI request in the following terms:

I'm seeking copies of text messages received by the Prime Minister from Dr Leigh on 22 February 2023 and any replies or text messages from the Prime Minister to Dr Leigh on that same date.

To assist with the searches, I advise that the text messages I am seeking were referred to by the Prime Minister in response to questions at the National Press Club on 22 Feb 2023.

<https://www.pm.gov.au/media/question-and-answer-national-press-club>

Authorised decision-maker

I am authorised to make a decision in this matter on the Prime Minister's behalf.

Material taken into account

In reaching my decision I had regard to:

- the terms of your request
- the Act
- the Guidelines issued by the Information Commissioner, under section 93A of the Act (Guidelines)

Decision

I have decided the documents you have requested are not official documents of a Minister and there is no right of access under the Act.

Reasons for decision

I have considered the right of access within section 11(1)(b) of the Act which extends to an ‘official document of a Minister’. ‘Official document of a Minister’ is defined in section 4 of the Act as follows (with emphasis):

- *a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document that relates to the affairs of an agency.*

“Agency” is defined to mean, relevantly, a Department or a prescribed authority.

In this context, I note the examples set out in paragraph 2.50 of the Guidelines of documents that may be held by a Minister but do not relate to the affairs of an agency, in particular:

- personal documents of a minister or the minister’s staff
- documents of a party political nature, and
- documents held in the minister’s capacity as a local member of parliament not dealing with the minister’s portfolio responsibility.

I am not satisfied that your request is for documents that relate to the “affairs of an agency” within the meaning of the Act. The subject matter of your request, being text messages referred to at the National Press Club on 22 February 2023, has no connection to the affairs of the Department of Prime Minister and Cabinet (or any other agency) or to the Prime Minister’s portfolio responsibilities.

I am therefore satisfied that you are not seeking access to ‘an official document of a Minister’ as defined under section 4 of the Act and that your request, accordingly falls outside the scope of the Act.

Review rights

If you disagree with the decision you may apply for an Information Commissioner review within 60 days from the date of this letter. The FOI Act does not provide for internal review of a decision by Minister.

More information about review rights and how to apply is available at:
www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review

Yours sincerely



Simona Gory
Senior Legal Adviser
27 March 2023