



**Australian Government**  
**Attorney-General's Department**

Our ref: FOI22/234; CM22/43725

20 October 2022

**Freedom of Information Request FOI22/234 – 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 Department of Prime Minister and Cabinet and was subsequently transferred to the Attorney-General's Department (the department) under section 16(1) of the FOI Act.

**Your request**

On 20 September 2022, you requested access to:

*I request the waiver to the performance of observing the Crown in Right of the United Kingdom pursuant to the second clause of the Commonwealth of Australia Constitution Act 1900 in representing the King of United Kingdom and no other for the purposes of the office.*

*I request the Enumerated Head of Power within the Commonwealth of Australia Constitution Act 1900 to allow the Governor General as empowered by the Constitution Act to proclaim a King for the Commonwealth.*

*If no power exists under the Constitution to create Royal Style and Titles, I request the information the Governor General relies upon as advised by the Prime Minister to create an alternate title for the King of the United Kingdom.*

*As the Royal Prerogative could be a source of power for the creation of the Kings Style & Title I request the instrument of transfer from the Monarch to the Governor General or Government for the power to be exercised.*

On 28 September 2022, the department acknowledged your request.

A decision in relation to your request is due on 20 October 2022.

**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.

In making my decision, I have taken the following into account:

- the terms of your request,

- advice provided to me by officers with responsibility for matters to which your request relates,
- the provisions of the FOI Act, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Section 24A of the FOI Act relevantly provides that an agency or Minister may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document:

- is in the agency's possession but cannot be found, or
- does not exist.

When considering a decision to refuse access under section 24A of the FOI Act, the Guidelines relevantly provide at paragraph 3.89 that 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 systems and the practice of destruction or removal of documents,
- the record management systems in place,
- the individuals within an agency or minister's office who may be able to assist with the location of documents, and
- the age of the documents.

To identify the document for your request, I arranged for staff likely to be able to identify documents to undertake comprehensive searches of relevant departmental information holdings. In particular, a departmental staff member with responsibility for processing FOI requests interrogated the department's records management system using search terms which were developed with reference to the information provided in the scope of your request. Despite these efforts, no relevant documents were identified.

Having regard to the above, I am satisfied that reasonable steps to locate the documents to which you have sought access were undertaken. I am also satisfied that the documents do not exist within the department's records holdings. I have therefore decided to refuse access pursuant to section 24A of the FOI Act.

#### **Additional information**

The Governor-General's powers arise either directly under the Constitution or under statute. It is generally accepted now that Commonwealth 'prerogative' powers form part of the 'executive' power of the Commonwealth vested in the Queen and exercisable by the Governor-General under section 61 of the Constitution.

Information about the practices associated with the accession of a new monarch is available on the following article published by the Parliamentary Library: [Queen Elizabeth II and the Federal Parliament – Parliament of Australia \(aph.gov.au\)](http://aph.gov.au).

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

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

Yours sincerely

A handwritten signature in black ink, appearing to be 'Sam Tse', written in a cursive style.

Sam Tse  
Assistant Director  
Freedom of Information and Privacy Section

**Attachments**

Attachment A: Review rights



## **Attachment A - FOI Review rights**

If you are dissatisfied with the decision of 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](mailto: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](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

email: [foidr@oaic.gov.au](mailto: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. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.