



## Australian Government

### Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT  
BARTON

FOI

FOI/2020/061

#### *FREEDOM OF INFORMATION ACT 1982*

**REQUEST BY:** Darren

**DECISION BY:** Celeste Moran  
Assistant Secretary  
Legal Policy Branch

Dear Darren

I refer to your email, dated 27 February 2020, to the Department of the Prime Minister and Cabinet (the **Department**), in which you made a request under the *Freedom of Information Act 1982* (the **FOI Act**) for access to the following:

*A document or instrument that provides for the exemption of the Prime Minister & Cabinets Office, its Officers and members of Staff to be exempt from operating within the spirit of the Freedom of Information Act to provide Information as found in the Act. (As opposed to Documents).*

*A document or instrument that provides for the exemption of the Prime Minister & Cabinets Office, its Officers and members of Staff to be exempt from the Parliamentary Services Act 1999, specifically section 10 pertaining to service values, and section 13 pertaining to codes of conduct.*

*A document or instrument that provides for the exemption of the Prime Minister & Cabinets Office, its Officers and members of Staff to be exempt from the Crimes Act, specifically section 24F, to act on information provided by people scrutinising the Governments activities to procure by lawful means the alteration of any matter established by a law in the Commonwealth, a State, a Territory or another country.*

#### **Authorised decision-maker**

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

## Decision

I have decided to refuse your request under section 24A(1)(b)(ii) of the FOI Act, on the basis that the documents you requested, do not exist.

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

- the terms of your request;
- the FOI Act; and
- the ‘Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*’<sup>1</sup> (the **FOI Guidelines**).

## Reasons

Section 24A(1) of the FOI Act provides that:

*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’s or Minister’s possession but cannot be found; or*
- (ii) does not exist.*

The FOI Guidelines relevantly provide as follows:

*The Act is silent on what constitutes ‘all reasonable steps’. The meaning of ‘reasonable’ in the context of s 24A(1)(a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.<sup>2</sup>*

*Agencies and ministers should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency’s operating environment or the minister’s office. At a minimum, 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.<sup>3</sup>*

Having regard to the terms of your request, my knowledge of the subject matters that are within the responsibility of the Department’s Legal Policy Branch (which is the relevant line

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<sup>1</sup> FOI Guidelines combined June 2019 published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

<sup>2</sup> FOI Guidelines, [3.88], quoting *De Tarle and Australian Securities and Investments Commission (Freedom of Information)* [2015] AATA 770, applying *Re Cristovao and Secretary, Department of Social Security* (1998) 53 ALD 138.

<sup>3</sup> FOI Guidelines, [3.89] (footnotes omitted).

area in the Department in relation to FOI), and documents held by that Branch, I am satisfied that the Department has taken all reasonable steps to identify documents relevant to your request, and that no documents relevant to your request exist.

I have therefore decided to refuse your request under section 24A(1)(b)(ii) of the FOI Act.

By way of reference, the Department processes FOI requests that it receives in accordance with its obligations under the FOI Act, the FOI Guidelines, the Department's FOI Business Rules (available at <https://www.pmc.gov.au/sites/default/files/files/foi-business-rules-feb-20.pdf>) and other related Departmental resources.

### **Processing and access charges**

I have decided not to impose processing charges in respect of your request.

### **Review rights**

Information about your rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

### **Complaint rights**

You may make a complaint to the Information Commissioner about the Department's actions in relation to a request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

Yours sincerely



Celeste Moran  
Assistant Secretary  
Legal Policy Branch

30 March 2020