



FOI16/113; 16/9295

21 September 2016

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Dear Mr Dickson

Freedom of Information Request FOI16/113

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary of your request and my decision

I, James Faulkner, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

On 23 August 2016 you requested access to documents relating to the Australian Constitution. Specifically you sought access to:

- “...the document or instrument that provides for circumstances where the Australian and State Governments may operate outside of the Australian Constitution from time to time...”
- *Where no document of instrument exists, the information/instrument/s that provides for the Governments of Australia to operate outside of the Australian Constitution.*
- *The document of instrument that may allow the Constitution to depart from the performance of the clauses or expression of the preamble of the Act to constitute the Commonwealth of Australia 1900.*
- *The document or instrument that may allow the Australian States to operate as independent States outside the indissoluble federal Commonwealth as expressed in the preamble of the foundation law.”*

Subparagraph 24A(1)(b)(ii) of the FOI Act provides:

- (1) *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*

All Australian governments are bound by the Australian Constitution. There is no document, instrument or information that allows the Australian government, or any state or territory government, to operate outside the Constitution.

It follows that the Attorney-General's Department has no relevant documents and I must refuse your request.

Material taken into account

I have taken the following material into account in making my decision:

- *Commonwealth of Australia Constitution Act 1900*
- the FOI Act (specifically section 24A), and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner for review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email: foi@ag.gov.au
post: Freedom of Information and Privacy Section
 Strategy and Delivery Division
 Attorney-General's Department
 3-5 National Circuit
 BARTON ACT 2600

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

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 this letter, and be lodged in one of the following ways:

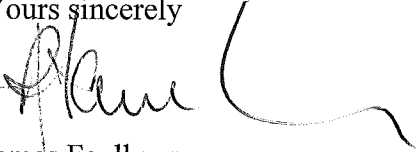
online: <https://forms.business.gov.au/aba/oaic/foi-review/>
email: enquiries@oaic.gov.au
post: GPO Box 5218, SYDNEY NSW 2001
in person: Level 3, 175 Pitt Street, SYDNEY NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Questions about this decision

If you wish to discuss this decision, please contact Sarah, FOI case manager, by telephone on (02) 6141 6666 or by email foi@ag.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Faulkner', with a large, sweeping flourish extending to the right.

James Faulkner
First Assistant Secretary
Office of Constitutional Law

