



FOI16/163; 16/11216

8 November 2016

By email: [REDACTED]

Freedom of Information Request FOI16/163

The purpose of this letter is to provide you with a decision in relation to your request for access to documents 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 made to the Attorney-General's Department (the department).

On 12 October 2016 you requested access to documents relating to local governments. Specifically you sought access to:

1. *The documents or instruments (either state or federal) that:*
 - a) *allows for more than two levels of government in Australia*
 - b) *disallows more than two levels of government in Australia*
2. *The documents or instruments (either state or federal) that:*
 - a) *allows for any level of government in Australia to exclude the crown*
 - b) *requires any level of government in Australia to include the crown*
3. *The documents or instruments (either state or federal) that:*
 - a) *shows that the crown is involved in each level of government in Australia (including local government)*
 - b) *shows that the crown is not involved in each level of government in Australia (including local government)*
4. *The documents or instruments (either state or federal) that:*
 - a) *shows that the local government is a distinct level of government in Australia*
 - b) *shows that the local government is not a distinct level of government in Australia*
5. *The documents of instruments (either state or federal) that:*
 - a) *shows that section 74A(1) of the Victorian Constitution is consistent with the Commonwealth Constitution (within the meaning of section 109 of with the Commonwealth Constitution)*
 - b) *shows that section 74A(1) of the Victorian Constitution is inconsistent with the Commonwealth Constitution (within the meaning of section 109 of with the Commonwealth Constitution)*
6. *The documents or instruments (either state or federal) that:*
 - a) *shows that the "no" vote of the 1988 federal referendum allows local government to continue to exist as it did before the vote*

b) shows that the “no” vote of the 1988 federal referendum disallows local government to continue to exist as it did before the vote

7. The documents or instruments (either state or federal) that:

a) shows how local government would be considered a monopoly for the purpose of the Statute of Monopolies 1623 (UK) Act

b) shows how local government would not be considered a monopoly for the purpose of the Statute of Monopolies 1623 (UK) Act.

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*

In this case, the Australian Constitution establishes the Australian States as part of the Commonwealth of Australia and the place of ‘the Crown’ in Australia’s system of national government. It leaves local government as an area of State responsibility. There are no other relevant Commonwealth documents.

It follows that I must refuse your request.

Material taken into account

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

- the *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 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:

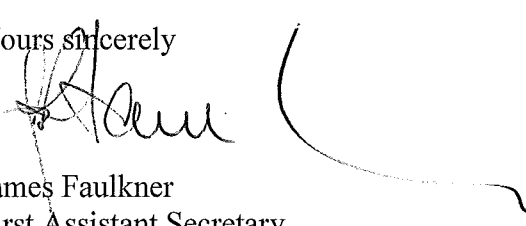
online: <https://forms.business.gov.au/aba/oaic/foi-review/>
email: enquiries@oaic.gov.au
post: GPO Box 5218, SYDNEY NSW 2001
in person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

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 Longo, FOI case manager, by telephone on (02) 6141 6666 or by email foi@ag.gov.au.

Yours sincerely



James Faulkner
First Assistant Secretary
Office of Constitutional Law