



Our ref: FOI18/276; CM18/8809

16 January 2019

Mr [REDACTED]

By email: [REDACTED]

Freedom of Information Request FOI18/191 – Decision Letter

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* (the FOI Act).

Your Request

On 3 December 2018, in response to correspondence from the Attorney-General's Department dated 25 October 2018 (FOI 18/204), you requested access as follows:

I request the document, instrument or source of power to validly create a Corporation Sole such as the Queen of Australia in 1973 or 1953.

I request the document, instrument, referendum or source of power to create an alternate Crown body politic of power and authority within the Commonwealth of Australia outside of the constitutional parameters stipulated within the Commonwealth of Australia Constitution Act 1900.

On 10 December 2018, the Department of the Prime Minister and Cabinet acknowledged your request. Your request was transferred to the Attorney-General's Department (the department) as it has responsibility for the subject matter.

On 21 December 2018, the Office of the Australian Information Commissioner (OAIC) granted the department an extension to 23 January 2019 under 15AB(2) of the FOI Act.

The role of the Queen

Your request appears to seek to raise questions about the Queen of Australia. While this department does not provide legal advice to the public, we make the following general comments.

A recent decision of the Court of Appeal of the Victorian Supreme Court, *Sill v City of Wodonga* [2018] VSCA 195, dealt with similar issues. His Honour Beach JA stated, at [22], that:

...one might also observe that the applicant's arguments premised upon the non-existence of the Queen of Australia are totally without merit, flying as they do in the

face of the High Court's decisions in *Pochi v Macphee* and *Nolan v Minister for Immigration and Ethnic Affairs*. As was observed by Gibbs CJ in *Pochi*, 'the allegiance which Australians owe to Her Majesty is owed not as British subjects but as subjects of the Queen of Australia'. As was observed by the plurality in *Nolan*, the words 'subject of the Queen' in the Constitution, should be treated as referring, 'in a modern context, to a subject of the Queen in right of Australia: cf *Royal Style and Titles Act 1973* (Cth)'. Put bluntly, Australian citizens owe allegiance to the Queen of Australia, not the Queen of the United Kingdom.

My Decision

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

Before making my decision in relation to your FOI request, I took all reasonable steps to locate the documents to which you seek access. This included making inquiries of staff likely to be able to identify relevant documents and arranging for comprehensive searches of relevant departmental electronic and hard copy holdings. I have identified that the department does not hold any documents within the scope of your request.

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

- the terms of your request
- the provisions of the FOI Act, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

On the basis that the documents to which you have requested access do not exist, I have decided to refuse access pursuant to section 24A of the FOI Act. Relevantly, section 24A of the FOI Act provides as follows:

Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

(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:

...

- (ii) does not exist.

Additional Information

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 at foi@ag.gov.au.

Yours sincerely



David Lewis
Acting General Counsel (Constitutional)

Attachments

Attachment A: Review Rights

