



Australian Government
Attorney-General's Department

Our ref: FOI20/076; CM20/5506

2 July 2020

Darren Dickson
[REDACTED]

Dear Mr Dickson

Freedom of Information Request FOI20/076 – Decision Letter

The purpose of this letter is to give you a decision about your request for access to documents which you addressed to the Attorney-General's Office under the *Freedom of Information Act 1982* (the FOI Act).

Your Request

On 2 June 2020, you requested access to documents relating to:

- 1. I request the enumerated head of power subject to and consistent with the Commonwealth of Australia Constitution Act 1900 to create an entity known as the 'National Cabinet'.*
- 2. I request the instrument that creates the National Cabinet empowering the National Cabinet to make decisions, directions and legislation, (upon, or) to effect the people of the Commonwealth.*
- 3. I request the enumerated head of power subject to and consistent with the Commonwealth of Australia Constitution Act 1900 for the creation of the entity known as 'Prime Minister'.*
- 4. I request the enumerated head of power subject to and consistent with the Commonwealth of Australia Constitution Act 1900 relied upon by the entity known as 'Prime Minister' to create an entity known as the 'National Cabinet'.*
- 5. I request the document/s providing the legal advice given to the Prime Minister, the government, Cabinet or United Nations by the Attorney Generals Office to create an entity known as the National Cabinet.*
- 6. I request the Government Gazette publication providing the valid creation of the National Cabinet as it appears to not exist within the public realm.*

On 4 June 2020, the department acknowledged your request.

On 22 June 2020, the Office of the Attorney-General formally transferred this request to the department for processing.

On 23 June 2020, you requested clarification about the difference between the Attorney-General's Office and the Attorney-General's Department in relation to the section 16 transfer.

On 30 June 2020, the department provided you with information about the department and the Attorney-General's Office and that such transfers are routine under section 16 of the FOI Act.

A decision in relation to your request is due on 2 July 2020.

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 relevant 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 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 [3.89] that an agency 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 who may be able to assist with the location of documents; and
- the age of the documents.

To identify the documents for your request, I arranged for staff likely to be able to identify documents to undertake comprehensive searches of relevant departmental electronic holdings. In particular, a departmental staff member with responsibility for processing FOI requests interrogated the department's records management system and the Parliamentary Documents 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 cannot be found or 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

In processing your request the department has identified the following publicly available sources which contain information about the establishment of the National Cabinet:

- Australian Parliament House, *Opening statement tabled by Mr Philip Gaetjens, Secretary of the Department of the Prime Minister and Cabinet, at a public hearing in Canberra on 13 May 2020*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19/Additional_Documents?docType=Tabled%20Documents, and

- Australian Parliament House, *Australian COVID-19 response management arrangements: a quick guide*,
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/AustralianCovid-19ResponseManagement#_Toc38973752.

The department trusts that this information will be of interest and use to you.

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

If you wish to discuss this decision, you can contact the FOI case officer for this matter, Nicholas, who can be contacted on (02) 6141 6666 or by email at foi@ag.gov.au.

Yours sincerely



Antony Catt
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 Attorney-General's Department (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. Applications for internal review must be lodged by email or post.

email: 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 this 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 can 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>.