



Our ref: FOI21/114; CM21/96505

11 August 2021



Freedom of Information Request FOI21/114 – Decision letter

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act), transferred to the Attorney-General's Department (the department) from the Department of Prime Minister and Cabinet (PM&C).

Your request

On 12 July 2021, you made a request to PM&C for access to:

1. *I request the cause, and/or reason, why the term, 'Commonwealth of Australia', was removed from the statutes by the passing of the Statute Law Revision Act 1973.*
2. *I request the cause, and/or reason, why the term, 'Australia', was made for use in place of the prior practice of using the term, 'Commonwealth of Australia'.*
3. *I request the instrument, and source of authority, for the removal of the authority of the Australian people, termed 'Commonwealth of Australia'.*
4. *I request the publication(s) issued for sufficient notice advising the Australian people of the removal the 'Commonwealth of Australia' was to be made or had been undertaken.*
5. *I request the cause, and/or reason, why the term, 'Parliament of Australia', was made for use of the federal parliament in place of the name 'Parliament of the Commonwealth'.*
6. *I request the cause, and/or reason, why the term, 'Australian Gazette', was made for use in place of the publication name, 'Commonwealth Gazette'.*
- 7.
8. *I request the instrument for the constitution of 'Australia'*

On 13 July 2021, PM&C sought transfer of your request to the department under s 16(1) of the FOI Act. The department accepted transfer of your request from PM&C the same day.

On 16 July 2021, the department acknowledged your request.

On 16 July 2021, you notified the department about a numbering error in your original request, and forwarded an amended request to reflect seven points of inquiry, not eight.

The department has processed your request to be for:

1. *I request the cause, and/or reason, why the term, 'Commonwealth of Australia', was removed from the statutes by the passing of the Statute Law Revision Act 1973.*
2. *I request the cause, and/or reason, why the term, 'Australia', was made for use in place of the prior practice of using the term, 'Commonwealth of Australia'.*

3. *I request the instrument, and source of authority, for the removal of the authority of the Australian people, termed 'Commonwealth of Australia'.*
4. *I request the publication(s) issued for sufficient notice advising the Australian people of the removal the 'Commonwealth of Australia' was to be made or had been undertaken.*
5. *I request the cause, and/or reason, why the term, 'Parliament of Australia', was made for use of the federal parliament in place of the name 'Parliament of the Commonwealth'.*
6. *I request the cause, and/or reason, why the term, 'Australian Gazette', was made for use in place of the publication name, 'Commonwealth Gazette'.*
7. *I request the instrument for the constitution of 'Australia'*

A decision in relation to your request is due on 11 August 2021.

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 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 or Minister 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 paragraph 3.89 that 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.

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 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 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

The terms 'Australia' and 'Commonwealth of Australia' are used interchangeably. There have been no amendments or proposed amendments to remove the term 'Commonwealth of Australia' from the Constitution.

Since Federation there have been 44 proposals for constitutional change put to Australian electors. Only 8 of these have been approved. A list of past referendum dates and results is publicly available from the Australian Electoral Commission:

https://www.aec.gov.au/Elections/referendums/Referendum_Dates_and_Results.htm

The Constitution of Australia is available publicly:

<https://www.legislation.gov.au/Details/C2005Q00193>

Section 2B of the *Acts Interpretation Act 1901* provides the following definitions applicable across all Commonwealth legislation:

- **Australia** means the Commonwealth of Australia and, when used in a geographical sense, includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory.
- **Commonwealth** means the Commonwealth of Australia and, when used in a geographical sense, includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory.
- **Gazette** means the *Commonwealth of Australia Gazette*

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 Mila, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Joanna Baker

Assistant 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, and be lodged in one of the following ways:

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 my 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 be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

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