



FOI15/220; 15/16093

2 December 2015

Mr Darren Dickson

Dear Mr Dickson,

Freedom of Information Request no. FOI 15/220

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

I, Susan Robertson, Assistant Secretary, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

On 11 November 2015 you requested access to documents relating to the Vienna Convention on the Law of Treaties and the International Covenant on Civil and Political Rights. Specifically you sought access to:

- 1. An Instrument, document, statute or reservation that exempts the Australian Government, the State Governments, the Crown, local government, or any of their agents, delegates or subordinates from strict compliance with The Vienna Convention on the Law of Treaties 1969, to which they are bound by, Entered into force for Australia on 27 January 1980, (AUSTRALIAN TREATY SERIES) regarding any private or public law, whether State or Federal Commonwealth.*
- 2. An Instrument, document, statute or reservation that exempts the Australian Government, the State Governments, the Crown, local government, or any of their agents, delegates or subordinates from strict compliance with The International Covenant on Civil and Political Rights 1966, to which they are bound by, Entered into force for Australia 13 November 1980, (AUSTRALIAN TREATY SERIES) regarding any private or public law, whether State or Federal Commonwealth.*
- 3. An Instrument, document, statute or reservation that creates a lawful right for a public authority employed or appointed by the Australian government, the State Governments, the Crown, local government or any of their agents, delegates or subordinates, considering any private or public law, whether State or Federal Commonwealth with regards to the rights of Australians to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to any relevant human right of Australians found within*

The International Covenant on Civil and Political Rights 1966 respective of The Vienna Convention on the Law of Treaties 1969.

I have identified that the Attorney-General's Department has no documents that fall within the scope of your request. I did this by taking all reasonable steps to find the documents, including arranging for a search of the department's electronic documents management systems and making inquiries of staff who may have been able to identify documents within the scope of your request, I am satisfied that the department does not have any relevant documents.

I have accordingly decided to refuse your request for access to the documents. More information, including my reasons for my decision, is set out below.

Decision and reasons for decision

With regard to the documents requested in your application, I have found that:

- the documents you requested about the exemption of government agencies from strict compliance with international treaties signed by Australia, or which create lawful rights for government agencies to act in a way incompatible with human rights, or to fail to properly consider human rights, do not exist (section 24A(1)(b)(ii)) – information about why they do not exist is given below.

Material taken into account

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

- the content of the documents that would fall within the scope of your request
- the FOI Act (specifically section 24A(1)(b)(ii))
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act

My reasons for refusing access are given below.

Documents non-existent (s 24A(1)(b)(ii))

Under section 24A(1) of the FOI Act, an agency may refuse a request for access to documents if:

- (a) all reasonable steps have been taken to find the document; and*
- (b) the agency or Minister is satisfied that the documents:*
 - (i) are in the agency's or Minister's possession but cannot be found; or*
 - (ii) do not exist*

After taking all reasonable steps to find documents within the scope of your request, I am satisfied that the department does not have any documents relating to your request.

Your application refers to the protection of human rights in Australia. Australia is founded on the rule of law and has a strong tradition of respect for the rights and freedoms of every individual. Australia is a party to seven core international human rights treaties, providing an agreed set of human rights standards and establishing mechanisms to monitor the way that a treaty is

implemented. Under Australian law, a treaty only becomes a direct source of individual rights and obligations when it is directly incorporated into domestic law. Human rights are recognised and protected across Australia through a range of laws at the federal and state and territory levels, the Australian Constitution, and the common law. Further information about the ways in which human rights are protected in Australia is available on the Department's website:
<http://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/default.aspx>

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
Office of Corporate Counsel,
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 2999, Canberra ACT 2601
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 Siobhan, the Freedom of Information case manager, by phone on (02) 6141 6666 or by email foi@ag.gov.au.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Susan Robertson", with a horizontal line underneath.

Susan Robertson
Assistant Secretary