



Andrew Terhorst

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Dear Mr Terhorst

FOI IR 24-01 (FOI 24-02) – Internal review of Decision on Access

I refer to your request for internal review made under the *Freedom of Information Act 1982 (Cth)* (FOI Act) to Airservices Australia (Airservices) on 12 April 2024. It relates to the primary decision FOI 24-02 which sought:

‘...documents showing correspondence between Airservices Australia, Qantas/Jetstar, and Virgin Australia related to the design and implementation of the current Runway 30 RNP-AR flight path.’

I am authorised under section 23 of the FOI Act and the Airservices Instrument of Delegation and Authorisation to make decisions on internal reviews under the FOI Act.

Background

On 20 September 2023, the applicant submitted a request seeking correspondence between Airservices Australia, Qantas/Jetstar, and Virgin Australia related to the design and implementation of the current Runway 30 RNP-AR flight path (FOI 23-32).

On 1 February 2024, the applicant submitted a new request with the same scope as above (FOI 24-02).

On 13 March 2024, a decision in respect of FOI 23-32 was provided to the applicant and one relevant document (correspondence with Virgin) is identified.

On 13 March 2024, a decision in respect of FOI 24-02 was provided. The timeframe for this request was determined to be 21 September 2023 – 13 March 2024, no further documents are identified and as such the decision is an access refusal under s24A of the FOI Act.

On 13 March 2024, the applicant provided a response to the above decisions, stating:

I submitted the FOI request last year and again this year because staffing issues your side caused lengthy delays.

I see only one email from Virgin Australia, which puzzles me as I understand Airservices Australia consults with the airline industry prior to implementing flight paths. Correspondence includes invites to meetings with meeting agendas and written feedback from industry representatives.

I do not consider your response to my FOI to be adequate. I believe there is much more correspondence between Airservices Australia and Qantas/Jetstar and Virgin Australia regarding Runway 30 RNP-AR. Indeed, the email correspondence from Virgin Australia hints strongly at this.

Please dig a bit deeper. I suspect someone is withholding information.

On 18 March 2024, Airservices advised the applicant of rights to internal review.

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On 12 April 2024, the applicant sought internal review in respect of FOI 24-02.

Original decision

The original decision found that no documents exist.

Internal review application

The applicant sought review of the application, arguing that:

Airservices has repeatedly stated Runway 30 RNP-AR was designed with industry input. The one email released suggests Airservices Australia is playing games. Not only is this disrespectful, it is childish and suggests Airservices Australia is not committed to transparency. I expect better from a government agency.

Decision

I have decided to affirm the original decision.

The reasons for my decision are set out in the Statement of Reasons at **Attachment A**.

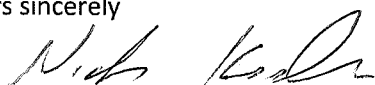
Review rights and complaints

Information about your rights of review and how you can make a complaint about the handling of your request is at **Attachment B**.

Contact

If you wish to discuss my decision please contact me at foi@airservicesaustralia.com.

Yours sincerely



Nick Kordaris
Authorised FOI Decision Maker

13 May 2024

STATEMENT OF REASONS

Material on which the decision is based

I relied on the following material in coming to this decision:

- the terms of the request and decision made for FOI 24-02;
- the application for internal review of that decision;
- the documents subject to the FOI request;
- advice from subject matter specialists within Airservices regarding the nature and sensitivity of the documents subject to the request;
- the FOI Act; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

In email correspondence dated 13 March 2024, the applicant provides:

I do not consider your response to my FOI to be adequate. I believe there is much more correspondence between Airservices Australia and Qantas/Jetstar and Virgin Australia regarding Runway 30 RNP-AR.

Furthermore, in the request for internal review, the applicant provides:

Airservices has repeatedly stated Runway 30 RNP-AR was designed with industry input. The one email released suggests Airservices Australia is playing games.

The decision subject to this review is an access refusal decision under section s24A of the FOI Act. That is, the decision was refused on the basis documents cannot be found or do not exist.

Accordingly, the issue to be decided in this review is whether Airservices has taken all reasonable steps to find documents within the scope of the request as it was required to do so by s 24A of the FOI Act.

Whether reasonable steps taken to find documents (s 24A)

Section 24A of the FOI Act requires an agency to take 'all reasonable steps' to find a requested document before refusing access to it on the basis that it cannot be found or does not exist. Whether 'all reasonable steps' have been taken is a question of fact in an individual case to be decided having regard to matters such as the terms of an applicant's request, the document creation and retention practices of an agency, and the steps taken by the agency to identify and locate documents requested by the applicant.

The FOI Guidelines explain:

The Act is silent on what constitutes 'all reasonable steps.' The meaning of 'reasonable' in the context of s 24A(1)(a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.

Agencies and ministers should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment or the minister's office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents

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- 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.¹

I have reviewed the document searches that were undertaken as a part of the original decision. This included consulting the appropriate stakeholder business teams in regards to the existence of documents. I note that this was an additional document search process undertaken in addition to FOI 23-32. All stakeholder business teams confirmed that there were no further documents in existence. I am satisfied that those Airservices staff members are best placed to undertake document searches in relation to the subject matter and to determine whether there are any documents that may be relevant.

Based on the information before me, including the scope of the request, the applicants' submissions and the Airservices evidence of searches, I am satisfied that appropriate searches were undertaken to locate the requested documents.

On that basis, I am satisfied that the original decision maker has taken all reasonable steps to find documents within the scope of the request as it was required to do so by s 24A, and that if documents existed, they would have been found.

I affirm the decision under review.

¹ FOI Guidelines [3.88] – [3.89]

INFORMATION ON REVIEW RIGHTS**Information Commissioner review**

If you want to seek direct review by the Information Commissioner (and not internal review), you must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

<p>Online: www.oaic.gov.au Post: GPO Box 2999, Canberra ACT 2601 Fax: +61 2 9284 9666 Email: enquiries@oaic.gov.au</p>	<p>In person: Level 3, 175 Pitt Street, Sydney NSW 2000</p>
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An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Commonwealth Ombudsman and Information Commissioner***Commonwealth Ombudsman***

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.

Information Commissioner

You may also complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au