



**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

LEVEL 17
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

5 June 2023

Watson Norwood
Right to Know

By email: foi+request-10236-631d05e5@righttoknow.org.au

Dear Mr Norwood,

Request under the Freedom of Information Act

I refer to your request for access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) made on 6 May 2023 to the Australian Competition Tribunal (the **Tribunal**). Specifically, you requested the following:

I am writing to make a request under the Freedom of Information Act for a complete copy of the departments' Freedom of Information (FOI) logs for the period 2013-2023, including any secondary departments controlled by the agency.

I request that this is provided as a document and not a simple redirect to the agency website as I am of the view that your online disclosure logs do not actively reflect your FOI requests that you have received in this period.

I would appreciate it if you could provide me with this information in an electronic format, such as a PDF or spreadsheet, if possible.

On 22 May 2023, the Federal Court of Australia (the **Court**) advised that your request to the Tribunal had been transferred to the Court under section 16 of the FOI Act. Section 16 of the FOI Act provides that an agency can transfer a request if the requested document is not in the possession of the agency but is in the possession of another agency, or if the subject matter of the document is more closely connected with the functions of another agency. The email to you dated 22 May 2023 also noted the following:

I note that the Tribunal has no physical resources of its own, and that registry services and administrative support for the Tribunal are provided by staff of the Tribunal and the Court. More information about the Tribunal can be found on its website at <https://www.competitiontribunal.gov.au/about/about-the-tribunal>.

For the avoidance of doubt, and as advised in the email to you dated 22 May 2023, the FOI request you initially made to the Tribunal has been dealt with by the Court. The purpose of this letter is to inform you of the decision that has been made on your FOI request.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to documents because as I am satisfied that all reasonable steps have been taken to find any documents that may fall within the scope of your request, but the documents cannot be found or do not exist.

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

- the terms of your request;
- the relevant provisions of the FOI Act and case law considering those provisions; and
- the FOI Guidelines, issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Subsection 24A(1) of the FOI Act provides:

- (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:*
 - (i) is in the agency's or Minister's possession but cannot be found; or*
 - (ii) does not exist.*

Extensive searches were undertaken by senior staff of the Tribunal and the Court. These searches involved searches of electronic documents on the Tribunal's shared drive, and searches of hard copy documents in the Tribunal's administration files. These searches took a total time of one and a half (1.5) hours.

As a result of the searches undertaken, no documents could be found that fell within the scope of your request. I am not aware of any other steps that could reasonably have been taken to identify any documents that fall within the scope of your request.

Having regard to the above, I am satisfied that all reasonable steps have been taken to find any documents within the ambit of your request, and that the documents cannot be found or do not exist. As there are no documents to provide you, I must refuse access to the documents requested under subsection 24A(1) of the FOI Act.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I 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 Court for an internal review of my decision. The internal review application must be made within thirty (30) days of the date of this letter.

Where possible, please attach reasons as to why you believe review of the decision is necessary. The internal review will be carried out by another officer within thirty (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 sixty (60) days of the date of this letter and be lodged in one of the following ways:

online: [Information Commissioner Review Application form \(business.gov.au\)](https://www.business.gov.au/foi/foi-review-application-form)

email: foidr@oaic.gov.au

post: Director of FOI Dispute Resolution, GPO Box 5288, Sydney NSW 2001

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at: <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/freedom-of-information-reviews/information-commissioner-review-process>.

Complaints

If you are dissatisfied with the way the Court has handled your FOI request, you may complain to the Information Commissioner in writing. There is no fee for making a complaint. More information about making a complaint is available on the OAIC website at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1.

Yours sincerely,



R Muscat
Registrar