



5 June 2023

Watson Norwood

Email: [foi+request-10277-be3b7775@righttoknow.org.au](mailto:foi+request-10277-be3b7775@righttoknow.org.au)

## Notice of Decision on Freedom of Information (FOI) Request

Dear Watson Norwood,

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* (Cth) (**the Act**).

### Authority to make decision

1. I am an authorised decision-maker under s 23 of the Act. My name and designation appear at the end of this letter.

### Your request

2. On 6 May 2023 you made the following request under the Act:

*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.*

### Relevant documents

3. No relevant documents exist.

### Decision

4. I have decided to refuse your request under s 24A(1)(b)(ii) of the Act as I am satisfied that the document you have requested does not exist.

### Material taken into account

5. In making my decision I have considered the following material:
  - your FOI application;
  - the FOI Act; and
  - guidelines released by the Office of the Australian Information Commissioner (**OAIC**) issued under section 93A of the Act (**Guidelines**).

### Reasons for decision

*Section 24A of the Act - requests may be refused if documents cannot be found, do not exist or have not been received*

6. Section 24A(1) of the Act states:

*(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.*

7. Paragraph 3.85 of the Guidelines state:

*There are two elements that must be established before an agency or minister can refuse a request for access to a document under s 24A:*

- the agency or minister must have taken all reasonable steps to find the document; and*
- the agency or minister is satisfied that the document cannot be found or does not exist.*

#### All reasonable steps

8. As an FOI Officer for IP Australia, I have the relevant knowledge and expertise to determine that the document you have requested does not exist. I also consulted with my colleagues in the FOI team and undertook reasonable searches of our system which confirmed that the document does not exist.
9. IP Australia does not maintain a "FOI log" which can be considered a complete record of all the FOI requests it has received. However, information which has been released in response to every FOI request received, subject to certain exceptions set out in s 11C of the Act, has been published on IP Australia's FOI disclosure log within 10 working days of giving the FOI applicant access to the documents.
10. The FOI Act does not specifically require information contained in an Agency's disclosure log to be made available indefinitely. An Agency can decide to withdraw content from its disclosure log and make it available in another form. IP Australia's disclosure log which is publicly available on its website includes information which has been released in response to every FOI request received from September 2021, subject to exceptions set out in s 11C of the Act. Information which has been released prior to September 2021 can be accessed via TROVE, of which links are available on the same webpage.
11. I am satisfied that all reasonable steps have been taken by IP Australia to identify and locate the document that you seek access to. I am satisfied that the document you have requested does not exist.

#### Clarification regarding s 11C exceptions

12. As set out above, s 11C of the Act specifies that information which has been released in response to an FOI request must be published on an Agency's FOI disclosure log within 10 working days of giving the FOI applicant access to the documents unless any of the exceptions set out in s 11C(1)(a) – (d) apply. A large percentage of the FOI requests received by IP Australia relate to trade mark documents. These documents are submitted to IP Australia by external stakeholders as part of the trade mark examination process and the information often contains sensitive business information which would be unreasonable to publish and is therefore exempt from publication under s 11C(1)(b) of the Act.

13. This information does not appear on IP Australia's FOI disclosure log in accordance with s 11C of the Act.

### **Your review rights**

14. If you are dissatisfied with my decision, you may apply for internal review or review by the Australian Information Commissioner. If you are dissatisfied, we encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.
15. Under section 54 of the Act, you may apply in writing to IP Australia for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter or 15 days from the date in which you receive access to the document, whichever is the longest period (section 54B of the FOI Act).
16. 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.
17. Further, under section 54L of the Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Australian 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/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

post: GPO Box 5218 Sydney NSW 2001

18. More information about review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website:

[https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/FOI Complaints](https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/FOI%20Complaints)

19. If you are not sure whether to lodge a request for review by the Australian Information Commissioner or a complaint with the Australian Information Commissioner, OAIC has more information at:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

### **Contact**

20. If you have any questions regarding this notice, please do not hesitate to contact me in writing by email at [FOI@ipaustalia.gov.au](mailto:FOI@ipaustalia.gov.au).

Yours sincerely

Simon Henkel  
FOI Officer  
Office of Legal Counsel