



Our Ref: LEX 2871

26 July 2024

Sean (Right to know)

By Email: foi+request-11573-f9cc3515@righttoknow.org.au

Internal review of Freedom of Information decision – my ref LEX 2967

I refer to your email of 24 July 2024, seeking internal review of the AFP's decision made on 23 July 2024 under the *Freedom of Information Act 1982* (the Act). I am an officer authorised to make internal review decisions under the Act.

BACKGROUND

On 28 June 2024, you sought access to the following:

A list of any and all website domains seized either directly by or with assistance from the Australian Federal Police between the years of 2008-2014

I would like to request that this list be provided in an easy to read format and include the following information:

- Domain name
- Domain Registry
- Date of Seizure
- Brief description of the reason for the seizure.

Where possible and if allowed, please include any and all artwork, graphics, or seizure notices applied to the domain once seized.

ORIGINAL DECISION

On 24 July 2024, an officer authorised to make decisions under the Act made a decision in the following terms:

SEARCHES

Searches for documents were undertaken by several AFP line areas, relevant to the scope of your request which included, a search of all records held by those line areas within the AFP.

As a result, no documents relating to your request have been located in the possession of the Australian Federal Police. By way of further explanation, the Act provides for access to current documents in an agency's possession. There is no requirement for an agency to create a document for the purpose of responding to an FOI request. The AFP's Freedom of Information Team is therefore unable to provide you with an "A list of any and all website domains seized..."

Freedom of Information

/ GPO Box 401 Canberra City ACT 2601

/ Email: foi@afp.gov.au

I consider all places where documents might be held were searched and the search terms were comprehensive enough to locate any relevant documents.

I understand no documents relating to your request have been located in the possession of the AFP.

Accordingly, I am satisfied all reasonable searches have been conducted and the AFP does not have any documents to produce in response to your request.

Section 24A states:

- “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.”

INTERNAL REVIEW

Your request for internal review relevantly stated:

I would like to apologise for my delay in responding as I've recently been sick. I'd like to request a review or request that the FOI officer search deeper for any information I have requested. I am willing to allow as much additional time as needed (within reason).

A cursory Google search produced dozens are official AFP articles that outline the agencies' actions in either directly seizing domains or assisting in their seizure. I would like to point your attention to a news update from last year where the AFP seized several domains from the Cook Islands and issued a take down notice on their landing page.

(I also apologise for this example, it's relating to an operation to take down child abuse websites however it is the first example I found after googling "AFP Website seizure" Therefore in my opinion, the information must exist in some form)

DECISION

The Act provides for access to existing documents in an agency’s possession. Section 17 of the Act relevantly provides:

- (1) (a) where it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- ...
- (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; ...;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

Having regard to the nature and scope of your request, and the nature of the AFP’s record holdings, it is not possible to produce a written document containing the information you seek in discrete form by the use of a computer or other equipment that is ordinarily available to the AFP for retrieving or collating stored information.

Accordingly, compliance with section 17(1) would substantially and unreasonably divert the resources of the AFP from its other operations.

Therefore, under section 17(2), I refuse access to the creation of a document as outlined in your request. Alternatively, under section 24, I also refuse access on the ground that I am satisfied that the document you request access to does not exist.


REVIEW RIGHTS

Under section 54L of the 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://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

Post: Director of FOI Dispute Resolution
Office of the Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

Yours sincerely,



Adam Anastasi
Deputy General Counsel – Commercial, Governance and Information Law
Chief Counsel Portfolio