



Australian Government



26 August 2024

Our ref: FOI2025Q1R3

Chow Wang

By email only: foi+request-11740-932f85f3@righttoknow.org.au

Dear Chow

Freedom of information request – Notice of Decision

1. I have made a decision about access to information you requested under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).
2. I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests made to the Australian Charities and Not-for-Profits Commission (**ACNC**).

Scope of request

3. In your email to the ACNC dated 29 July 2024, you requested access to the following documents related to NUCLEAR FOR AUSTRALIA LTD (ABN 26 672 442 027) (**the Charity**):
 - (1) A sanitised record of donations, pertaining to amounts and dates, received from companies and individuals;
 - (2) Ongoing expense records, including a current list of assets for the 2023-2024 and 2024-2025 financial years;
 - (3) Documents clarifying the process by which funds have been allocated for a 'US tour of the Diablo Canyon Power Plant'. In particular, documentation relating to the application process and steps taken to ensure the Charity has upheld its not-for-profit obligations; and





- (4) A copy of written notices to the Charity's Company Secretary, or notes of the meeting in which the facts and nature of the Charity's directors declared conflicts of interest, in accordance with the Charity's governing document.

4. I acknowledged your request on 30 July 2024.

Steps taken to identify documents and information

5. The ACNC's Reporting and Registration directorates typically deal with the sort of matters that would fall within the scope of your request. These directorates are therefore most likely to hold any documents that the ACNC might have within the scope of your request.
6. I reached out to the each of the directorates most likely to hold a document within the scope of your and requested that they thoroughly search their electronic records, including email inboxes and outboxes and any records of conversations, for any relevant documents.
7. I have also undertaken my own searches of the ACNC's primary electronic file management system.

Decision on access

8. I have decided to refuse to provide you with access to any documents falling within the scope of your request as such documents do not exist or cannot be found, pursuant to subsection 24A(1) of the FOI Act.
9. Subsection 24A(1) of the FOI Act states that I may refuse a request for access to a document if:
 - (a) All reasonable steps have been taken to find the document; and
 - (b) I am satisfied that that the document is:
 - (i) in the ACNC's possession and cannot be found, or
 - (ii) does not exist.
10. A detailed explanation is provided below.



Material taken into account

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

- (a) the terms of your FOI request;
- (b) the relevant provisions of the FOI Act, particularly section 24A; and
- (c) the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**) particularly: Part 3 – Processing and deciding on requests for access.

Reasons for refusing to provide access

S24A(1) – Documents lost or non-existent

- 12. Section 24A(1) of the FOI Act only applies if I have taken all reasonable steps to locate any documents that might be within the scope of your request.
- 13. The information that registered charities must provide the ACNC with is prescribed in the ACNC Act and *Australian Charities and Not-for-profits Commission Regulations 2022 (Cth)*.
- 14. This information includes annual financial reports and/or annual information statements, details about operating areas, and responsible persons. This information is generally made available to the public via the ACNC Charity Register (<https://www.acnc.gov.au/charity/charities>).
- 15. Outside of the above information, charities *may* be requested to provide additional information to support a registration application or as part of ACNC compliance activity.
- 16. Despite this, I have thoroughly searched our electronic records to see if we might happen to hold the sort of documents you are seeking. I am satisfied that we do not, and for this reason I have decided to refuse to grant you access to any such documents.
- 17. The Office of the Australian Information Commissioner (**OAIC**) provides additional guidance on what “all reasonable steps” means, in a practical sense. Consistent with that guidance, I have interpreted your request broadly, and considered what type of documents might



reasonably hold information which falls within the scope of your request. I have considered where such documents would usually be stored as a matter of practice, as well as where such documents might possibly be stored by an ACNC officer.

18. I should add that even if the ACNC did hold documents within the scope of your request, the secrecy provisions in the ACNC Act *may* still need to be considered. I have not given a detailed consideration to whether an exception would apply, and I could release this information to you, as I am satisfied that the documents you seek do not exist.

Review Rights

19. In accordance with paragraph 26(1)(c) of the FOI Act, a statement setting out your rights of review under the FOI Act is attached.

Yours sincerely

A handwritten signature in black ink, appearing to be the initials 'AN'.

A Nguyen
Freedom of Information Officer



Your review rights

If you are dissatisfied with my decision, you may apply to the ACNC for an internal review or to the Australian Information Commissioner for an external review.

Internal review

Under section 54 of the FOI Act, you may apply to the ACNC for an internal review of my decision in one of the following ways:

by email: foi@acnc.gov.au
by post: Freedom of Information Contact Officer
Australian Charities and Not-for-profits Commission
GPO Box 5108, Melbourne VIC 3001

An application for internal review must be made in writing within 30 days of the date of this letter. Where possible, please include reasons why you believe review of the decision is necessary. The internal review decision will be made by another ACNC officer within 30 days of receiving your application for internal review. Please quote **FOI 2025Q1R3** when lodging your application.

Australian 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 Australian Information Commissioner must be made in writing within 60 days of the date of this letter, and be made in the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10
by email: foidr@oaic.gov.au
by post: Director of FOI Dispute Resolution
GPO Box 5288, Sydney NSW 2001

More information about Australian Information Commissioner review is available on the Office of the Australian Information Commissioner website: <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews>

Complaints

Any complaint about the processing of your FOI request can be directed to either the Australian Information Commissioner or the Commonwealth Ombudsman. The complaint should set out the grounds on which you consider the action should be investigated. Complaints can be made in writing, by phone, or by using an online form available from their respective websites.

Australian Information Commissioner contact details:

- https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1
- foidr@oaic.gov.au
- Director of FOI Dispute Resolution at GPO Box 5288, Sydney NSW 2001

Ombudsman contact details:

- <https://forms.ombudsman.gov.au/prod?entitytype=Approach&layoutcode=ApproachWebForm>
- 1300 362 072 (calls from mobile phones at mobile phone rates)
- Commonwealth Ombudsman at GPO Box 442, Canberra ACT 2601
- <https://www.ombudsman.gov.au/contact-us>