

In reply, please quote:
FOI30/137

13 August 2024

Ben Fairless

By email: foi+request-11807-6c0b270a@righttoknow.org.au

Dear Ben Fairless,

Re: Freedom of Information Request – decision on request

1. I refer to your email to the Bureau of Meteorology ('the Bureau') dated 31 July 2024, in which you requested access under the *Freedom of Information Act 1982* (Cth) ('FOI Act') to the following:

I'm looking for documents related to the reason why https cannot be enabled on bom.gov.au.

(I refer to the above as 'your request'.)

2. The Bureau acknowledged your request on 7 August 2024.
3. Subsection 15(5)(b) of the FOI Act provides that the Bureau has 30 days to provide you a decision on your request. This means a decision is due by 30 August 2024.
4. I am authorised to make a decision in relation to your request pursuant to section 23 of the FOI Act.
5. This is a decision on your request.

Decision and reasons for decision:

6. I have decided to notify you pursuant to subsection 25(2) of the FOI Act that I neither confirm nor deny the existence of any document/s of the type described by your request.
7. Section 25 provides that an agency may refuse access without confirming or denying the existence of a document in circumstances where information as to the existence or non-existence of that document, if it existed, would be exempt under sections 33, 37(1), or 45A of the FOI Act¹. (Please see [Attachment A](#).) The Bureau is an agency within the meaning of the FOI Act.
8. As provided by the FOI Guidelines, the Bureau *'does not have to search for or conduct an inquiry into the nature of the document being sought'*, but subsection 25(2) *'requires only an assessment of whether a document of the kind requested is, or would be, an exempt document'* under sections 33, 37(1) or 45A².

¹ Consider the FOI Guidelines issued under s 93A by the Australian Information Commissioner at [3.103]-[3.107] ('FOI Guidelines'); *Paul Farrell and Australian Federal Police* [2017] AICmr 113.

² FOI Guidelines (n 1) at [3.105].

9. Having assessed all relevant circumstances, I consider it appropriate for me to neither confirm nor deny the existence of any document potentially within scope of your request. To do so would compromise the appropriate level of security necessary for maintenance of the Bureau's computing systems (including the Bureau's website).
10. In my view, confirming or denying the existence of a document or information within a document would give rise to unreasonable risks by creating potential vectors or avenues for attack. I have considered the circumstances where identifying information relating to the Bureau's website protocol would enable malicious actors to more easily access the Bureau's systems (including website pages) and thereby cause harm.
11. In making those observations, I note that the Bureau's technological systems (including its website) are potential targets of malicious vectors or attacks aimed at compromising integrity and function, particularly because of its relationship with Australia's defence capabilities.
12. I consider that any document/s potentially falling within scope of your request, if they existed, would be exempt from release under s 33 of the FOI Act. Section 33 provides that a document is exempt if its disclosure would, or could reasonably be expected to, cause damage to the security or defence of the Commonwealth. (Please see [Attachment B](#)).
13. Having regard to all relevant matters in the circumstances, I neither confirm nor deny the existence of any document of the type described by your request in accordance with section 25.

Materials considered in making my decision:

14. In making my decision I have had regard to:
 - a. your request;
 - b. the FOI Act;
 - c. the FOI Guidelines issued under s 93A of the FOI Act by the Australian Information Commissioner; and
 - d. other relevant matters in the circumstances.

Further information:

15. Information about your review rights are set out in the following pages.
16. The Bureau aims to provide accessible documents. If you need this document in a different format, or if you have any questions, please contact FOI@bom.gov.au.

Yours sincerely

(Approved electronically)

Michael Webb

General Manager
Service & Infrastructure Management

Review rights:

17. You may seek a review of this decision by way of the review rights available to you.
18. Under section 54 of the FOI Act, you may apply for an internal review of this decision. An internal review application must be made by whichever date is the later between:
 - a. 30 days of you receiving this notice; or
 - b. 15 days of you receiving the documents to which you have been granted access.
19. An internal review will be conducted by a different authorised decision-maker. No particular form is required to apply for review although it will assist your case to set out the grounds on which you believe that the original decision should be overturned.
20. An application for an internal review can be made by either:
 - a. **Email:** FOI@bom.gov.au
 - b. **Post, addressing it to:**
Freedom of Information Officer
Bureau of Meteorology
GPO Box 1289 Melbourne 3001
21. If you seek an internal review, please note *the Bureau's internal reference number* provided at the start of this decision notice.
22. If you seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner ('AIC') for a review of the internal review decision.

External review by the Australian Information Commissioner:

23. Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the AIC without first undertaking an internal review. Your application must be made within 60 days of you receiving this notice.
24. The AIC is an independent office holder who may review decisions of agencies under the FOI Act. More information is available on website of the Office of the Australian Information Commissioner: www.oaic.gov.au.
25. You can contact the OAIC to request a review by one of the following ways:
 - a. **Via the online form on the OAIC website:** <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review>
 - b. **Email:** foidr@oaic.gov.au
 - c. **Post, addressing it to:**
Director of FOI Dispute Resolution
GPO Box 5218, Sydney NSW 2001

FOI complaints:

26. If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can complain to the AIC. A complaint must be made in writing and can be lodged in one of the following ways:
27. You can contact the OAIC to request a review by one of the following ways:
 - a. **Via the online form on the OAIC website:** <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review>
 - b. **Email:** foidr@oaic.gov.au

c. Post, addressing it to:

Director of FOI Dispute Resolution
GPO Box 5218, Sydney NSW 2001

28. More information about Information Commissioner reviews and complaints can be found on the OAIC's website: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints>.

**Attachment A: section 25 of the FOI Act:****25 Information as to existence of certain documents**

- (1) Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be:
 - (a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1);
or
 - (b) an exempt document to the extent referred to in subsection 45A(2) or (3).
- (2) If a request relates to a document that is, or if it existed would be, of a kind referred to in subsection (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister (as the case may be) neither confirms nor denies the existence, as a document of the agency or an official document of the Minister, of such a document but that, assuming the existence of such a document, it would be:
 - (a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1);
or
 - (b) an exempt document to the extent referred to in subsection 45A(2) or (3).
- (3) If a notice is given under subsection (2) of this section:
 - (a) section 26 applies as if the decision to give the notice were a decision referred to in that section; and
 - (b) the decision is taken, for the purposes of Part VI, to be a decision refusing to grant access to the document in accordance with the request referred to in subsection (2) of this section, for the reason that the document would, if it existed, be:
 - (i) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or
 - (ii) an exempt document to the extent referred to in subsection 45A(2) or (3).



Attachment B: section 33 of the FOI Act:

33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Note: See also subsection 4(10).