



OFFICIAL

# Freedom of Information (FOI) request

Notice of Decision

Reference: FOI/2024/365

Mr Oliver Smith  
Email: foi+request-12256-26e68dea@righttoknow.org.au

Dear Mr Smith

I refer to your request to the Department of the Prime Minister and Cabinet (the Department), under the *Freedom of Information Act 1982* (the FOI Act), received on 31 October 2024.

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

## Scope of request

You set out your request in the following terms:

*Under the FOI act, I seek all correspondence from the Hon Patrick Gorman MP acting as the Assistant Minister to the Prime Minister sent to the National Australia Day Council in relation to Australia Day 2025.*

## Request decided out of time

A decision on your request was due 2 December 2024. Unfortunately the Department was unable to complete the processing of your request by the due date. In these circumstances the Department follows the Guidelines issued by the Information Commissioner under section 93A of the FOI Act (the Guidelines) which states:

*Where an access refusal decision is deemed to have been made before a substantive decision is made, the agency or minister continues to have an obligation to provide a statement of reasons on the FOI request.<sup>1</sup>*

## Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

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Paragraph 3.161 of the Guidelines

## Material taken into account

In reaching my decision I have had regard to the following:

- the terms of your request
- searches and inquiries undertaken by the Department
- the FOI Act
- the FOI Guidelines issued by the Information Commissioner under section 93A of the FOI Act (the Guidelines)

## Decision

I have decided to refuse your request under section 24A(1) of the FOI Act, on the grounds that the Department has taken all reasonable steps to locate the documents you have requested, and those documents do not exist.

### Reason for decision

My findings of fact and reasons for deciding to refuse your request for access are set out below.

#### 1. Documents cannot be found or do not exist

Section 24A(1) of the FOI Act provides that:

*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.*

In determining what the FOI Act means with respect to 'all reasonable steps', I have had regard to the Guidelines which discuss the meaning of 'reasonable' in section 24A(1)(a). It is not designed to go beyond the limit assigned by reason, not to be extravagant or excessive, rather to be moderate and of such an effort to be appropriate or suitable to the circumstances<sup>2</sup>.

The Department has conducted a search, for any relevant records that would meet the terms of your request, in its Outlook email system, Parliamentary Document Management System (PDMS) and Share+ document management system. There were no documents found to be in the possession of the Department.

I am satisfied that the measures taken by the Department to locate documents in response to your request under the FOI Act, as outlined above, are appropriate and suitable given the circumstances. After taking all reasonable steps to find the documents, no documents relevant to your request have been identified.

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<sup>2</sup> Paragraph 3.88 of the Guidelines

Accordingly, I am refusing your request for access under section 24A(1) of the FOI Act as the documents you have requested do not exist.

## Review rights

If you disagree with my decision, you may apply for Information Commissioner review of the decision.

### 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 60 days after the date of this letter. You can apply using the [OAIIC Web Form](#).<sup>3</sup>

## FOI Complaints

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 make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. You can make a complaint using the [OAIIC Web Form](#).<sup>4</sup>

If you wish to discuss any aspect of your requests, you can contact the FOI Section by email at [foi@pmc.gov.au](mailto:foi@pmc.gov.au).

Yours sincerely



David Belgrove  
Assistant Secretary  
Parliamentary and Government Branch  
Department of the Prime Minister and Cabinet

9 December 2024

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<sup>3</sup> <https://webform.oaic.gov.au/prod?entitytype=ICReview&layoutcode=ICReviewWF>

<sup>4</sup> <https://webform.oaic.gov.au/prod?entitytype=Complaint&layoutcode=FOIComplaintWF>