



OFFICE OF THE OFFICIAL SECRETARY
TO THE GOVERNOR-GENERAL

21 February 2025

Via email: foi+request-12763-c4670eac@righttoknow.org.au

Dear Tyler,

Re: Application under the *Freedom of Information Act 1982*
Ref: FOI2025015

I refer to your email of 23 January 2025 to the FOI Coordinator of the Department of Prime Minister and Cabinet (PM&C), in which you make a request under the Commonwealth Freedom of Information Act 1982 (FOI Act):

Is it possible to provide copy of document recording the Governor-General's approval of the Australia-Tuvalu Falepili Union Treaty 2023 (<https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty>); and copy of accompanying documents submitted to the Governor-General in seeking the Governor-General's approval of the Treaty?"

As PM&C's FOI Coordinator advised on 12 February 2025, your request was transferred to the Office of the Official Secretary to the Governor-General (OOSGG), as it was more closely connected with the functions of the OOSGG than with those of PM&C.

Material taken into account

In making my decision, I have had regard to the following:

- the terms of your request;
- advice from Agency officers with responsibility for matters relating to the documents to which you sought access;
- the relevant provisions of the FOI Act; and
- the Commonwealth's guidelines on FOI.

Application of the FOI Act

The FOI Act has a limited application to the Official Secretary to the Governor-General. Section 6A provides that the Act does not apply to any request for access to a document of the Official Secretary unless the document relates to matters of an administrative nature. In *Kline v Official Secretary to the Governor General* [2013] HCA 52 the High Court said:

'the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources.'

Further, the High Court held the phrase does not apply to documents that relate to the discharge of the Governor-General's 'substantive powers and functions'.

24A - Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (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.

Decision

The Office has been unable to identify any documents within the scope of your request.

Accordingly, I advise that I must reject your request under section 24A of the FOI Act on the basis that the document(s) sought cannot be found, do not exist or have not been received.

Additional information provided outside the Office's FOI obligations

As part of the Governor-General's substantive powers and functions the Governor-General signs Instruments and Legislation, however the original documents are not retained by this Office and are returned to the originating entity. The Australia-Tuvalu Falepili Union Treaty 2023 is administered by the Department of Foreign Affairs and Trade, and they would likely be best placed to respond to your query.

Review rights

You are entitled to seek review of this decision. Your rights are set out at Attachment A to this letter.

Yours sincerely



Jeff Barnes

Deputy Official Secretary to the Governor-General

ATTACHMENT A — INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

You can request internal review within 30 days of you receiving this decision. An internal review will be conducted by a different officer from the original decision-maker.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed. Applications for internal review can be made:

- via email to FOIcontactofficer@gg.gov.au
- by mail to The Official Secretary to the Governor-General, Government House, CANBERRA ACT 2600

If you choose to seek an internal review, you will afterward have a right to apply for Information Commissioner review (IC review) of the internal review decision.

OR

2. INFORMATION COMMISSIONER REVIEW OR COMPLAINT

You also have the right to seek IC review of this decision. For FOI applicants, an application for IC review must be made in writing within 60 days of the decision. For third parties who object to disclosure of their information, an application for IC review must be made in writing within 30 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

The complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify this office as the agency about which you are complaining. The OAIC recommend that complaints be made via the FOI Complaint Form available on the OAIC website.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

More information about the Information Commissioner reviews and complaints is available at its website: www.oaic.gov.au/freedom-of-information/foi-review-process.