

Our ref: FOI-2021-10061

25 August 2021

Mr Trav S

Emailed to: foi+request-7672-d73aa97f@righttoknow.org.au

Dear Mr Trav S

I refer to your email dated 8 August 2021, in which you requested access to documents under the *Freedom of Information Act 1982* (the FOI Act). Your request was framed in the following way:

‘...Service providers under a Commonwealth contract who suspect wrongdoing within the public sector can raise their concerns under the Public Interest Disclosure Act. The Ombudsman provides examples of conduct that may warrant PID. Can we ask for the meaning of the following terms/words:

1. contravention of law
2. corruption
3. perverting the course of justice
4. maladministration
5. abuse of public trust
6. wastage of public money...’

This letter constitutes notice of my decision on your request for access. I am authorised to make decisions on behalf of our Office under s 23 of the FOI Act.

Decision

We have searched our records for any documents we may hold which fall within the scope of your request. We have searched our records for any documents containing a definition, for the purposes of the *Public Interest Disclosure Act 2013*, of the terms and words set out in your request. Our searches did not identify any relevant documents.

Subsection 24A(1) of the FOI Act permits refusal of a request for access to a document where all reasonable steps have been taken to find the requested document or documents and the agency or Minister is satisfied that the documents do not exist. Having regard to the outcome of our searches for any documents relevant to your request, I have decided to refuse your request under subsection 24A(1) of the FOI Act.

Publicly available information about the Public Interest Disclosure Scheme is located at [Public Interest Disclosure - Commonwealth Ombudsman](#). The Agency Guide to the *Public Interest Disclosure Act 2013* is also publicly available and is located at [Agency Guide to the PID Act Version 2.pdf \(ombudsman.gov.au\)](#).

Review rights

Internal review

Under s 54 of the FOI Act, you may apply in writing to our Office for an internal review of my decision. The internal review application must be made within 30 days of the date on which you were notified of my decision.

Where possible, please attach reasons for why you believe review of the decision is necessary. The internal review will be carried out by another Ombudsman officer within 30 days.

Review by the Australian Information Commissioner

Under s 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 of the date of this letter, and be lodged in one of the following ways:

- online at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>
- via email to foidr@oaic.gov.au
- by overland mail to GPO Box 5218 SYDNEY NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

Complaints to the Information Commissioner

You may complain to the Information Commissioner about action taken by the Ombudsman in relation to your FOI request.

While there is no particular form required to make a complaint, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way in which your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.

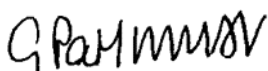
You may lodge your complaint in one of the following ways

- online at:
https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1
- by overland mail to GPO Box 5218 SYDNEY NSW 2001
- by email to FOIDR@oaic.gov.au.

Contacts

If you require clarification of any of the matters discussed in this letter you should contact me using the contact information set out at the foot of the first page of this letter.

Yours sincerely



Gregory Parkhurst
Senior Legal Officer

ATTACHMENT A – Relevant FOI Act provisions

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

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.

54 Internal review—access refusal decision

- (1) This section applies if an access refusal decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.
- (2) The applicant in relation to the request may apply under this Part for the review (the ***internal review***) of the access refusal decision.

54L IC reviewable decisions—access refusal decisions

- (1) An application may be made to the Information Commissioner for a review of a decision covered by subsection (2).
- (2) This subsection covers the following decisions:
 - (a) an access refusal decision;
 - (b) a decision made by an agency on internal review of an access refusal decision (see section 54C);
 - (c) a decision refusing to allow a further period for making an application for internal review of an access refusal decision (under section 54B).

Note 1: An application for the review of an access refusal decision made for the purposes of paragraph (a) may be made regardless of whether the decision was the subject of internal review.

Note 2: If no decision is made on internal review within 30 days, a decision to affirm the original access refusal decision is taken to have been made (see section 54D).

- (3) The IC review application may be made by, or on behalf of, the person who made the request to which the decision relates.