

AustLII**Australian Information Commissioner****'AUQ' and Department of Health and Aged Care (Freedom of information) [2025] AICmr 54 (26 March 2025)**

Last Updated: 28 March 2025

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Decision and reasons for decision of**Rocelle Ago, General Manager Freedom of Information Case Management****Delegate of the Australian Information Commissioner for the purposes of s 55K of the Freedom of Information Act 1982**

Applicant	'AUQ'
Respondent	Department of Health and Aged Care
Decision date	26 March 2025
Reference	MR22/00538
Catchwords	Freedom of Information — Whether reasonable steps taken to find documents — (CTH) <i>Freedom of Information Act 1982</i> s 24A

Decision

- Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I affirm the decision of the Department of Health and Aged Care (the Department) of 27 February 2022.

Key points

- This decision discusses searches (s 24A) in relation to material held by the Department. It affirms the Department's decision given the scope of the applicant's request.

Reasons for decision**Scope of IC review**

- On 18 February 2022, the applicant applied to the Department for access to:

... an implementation report on the Covid 19 Vaccine Safety Monitoring Plan as per the key objectives listed in the plan:

- timely collection and management of reports of COVID-19 vaccine adverse events following immunisation*
- timely detection and investigation of COVID-19 vaccine safety signals*
- timely action to address any COVID-19 vaccine safety concerns*
- timely communications to inform the public of emerging COVID-19 vaccine safety information and to support public confidence in vaccines*
- close collaboration and coordination of effort with other vaccine safety stakeholder groups*

I specifically request a specific report outlining progress of key outputs, outcomes and timelines as per the above objectives.

4. On 27 February 2022, the Department refused access to the applicant's request on the basis that no report exists that captures the applicant's request. Instead, the Department referred the applicant to its COVID-19 weekly safety report^[1] in relation to objectives 1 – 4 and provided a written response in its decision in relation to objective 5.

5. The applicant sought review of the decision on the basis that relevant documents should have been located.
6. The issue to be decided in this Information Commissioner review (IC review) is whether the Department has taken all reasonable steps to identify documents within the scope of the request and that documents cannot be found or do not exist.

7. In an IC review of an access refusal decision, the agency bears the onus of establishing that its decision is justified, or that I should give a decision adverse to the applicant.^[2]

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

- . the Department's decision and reasons for decision of 27 February 2022
- . the evidence of searches undertaken by the Department
- . the FOI Act^[3]
- . the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act^[4] to which agencies must have regard in performing a function or exercising a power under the FOI Act,^[5] and
- . the parties' submissions.

Whether reasonable steps taken to find documents (s 24A)

9. Section 24A of the FOI Act requires that an agency take 'all reasonable steps' to find a requested document before refusing access to it on the basis that a document cannot be found or does not exist.

10. The applicant maintains that the Department should have been able to locate a document within the scope of their request. They maintain that when they were initially advised that no report existed, the applicant indicated a 'willingness to accept broader documentation' and the Department's search was unduly restrictive.^[6]

11. The applicant submits that while a single report relevant to their request may not exist, that 'does not necessarily mean the underlying data, analysis, and progress tracking does not exist' and the Department should be compelled to conduct more thorough searches to identify this material.

12. The applicant also expressed concern about being required to make a new, broader request under the FOI Act on the basis that it would result in additional delay and deny transparency over public health issues.

13. The Department relevantly maintains that its access refusal decision is justified because:

- . the Department interpreted the applicant's request reasonably as seeking 'any document outlining the progress of implementing the Plan as measured against the objectives set out in the Plan', and
- . the Department's searches were reasonable given the scope of the applicant's request noting the requirements imposed by the last sentence of the applicant's request which indicates the applicant is seeking 'a report that outlines the progress of key outputs, outcomes and timelines set out in the Plan and, in doing so, evaluates the implementation of the Plan against its objectives'.

14. During this review, the Office of the Australian Information Commissioner (OAIC) issued a direction^[7] and notice^[8] to the Department requesting evidence of its searches and requiring the Department to conduct further searches.

15. In response, the Department provided the OAIC with details and evidence of the searches undertaken in relation to the request and the outcome of those searches. I have considered these records, which indicate that Department consulted with staff from relevant business areas and undertook searches through its records management systems.

16. Those records also identified the:

- . persons who were consulted and undertook searches
- . date the searches were undertaken
- . locations searched
- . search terms used

- . outcomes of the searches undertaken, and
 - . reasons as to why no relevant documents have been found (in particular the scope of the applicant's request).
17. I acknowledge the applicant's concerns about being required to make a new and broader request under the FOI Act. However, having considered the scope of the applicant's request and the parties' submissions, even reasonably construed I understand the applicant's request seeks access to a report involving commentary and analysis relating to the 5 objectives listed in the request, rather than just a document that records particular datasets and information. It is also apparent from the language in the request the applicant was seeking access to a report/ reports of this nature (containing analysis and commentary) not incidental material that relates to the general subject of the request.
18. Even though the applicant subsequently indicated that they were willing to accept a broader range of material after receiving the Department's decision, it is not open to an IC review applicant to expand the scope of their request after an agency has finalised it.^[9] Instead, an applicant may make a new request for that additional material.^[10]

Finding (s 24A)

19. For the reasons discussed above, I find that the Department has taken all reasonable steps to locate other documents relevant to the applicant's access request. I am satisfied that documents cannot be found or do not exist.

Rocelle Ago

General Manager Freedom of Information Case Management

Delegate of the Australian Information Commissioner for the purposes of s 55K of the *Freedom of Information Act 1982*

26 March 2025

Annexure A

Whether reasonable steps taken to find documents (s 24A)

Section 24A of the FOI Act requires that an agency take 'all reasonable steps' to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

The FOI Guidelines state:

The Act is silent on what constitutes 'all reasonable steps'. The meaning of 'reasonable' in the context of s 24A(1) (a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.

Agencies and ministers should undertake a reasonable search on a flexible and common-sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment or the minister's office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

the subject matter of the documents

the current and past file management systems and the practice of destruction or removal of documents, and the record management systems in place

the individuals within an agency or minister's office who may be able to assist with the location of documents, and

the age of the documents.^[1]

Review rights

Review by the Administrative Review Tribunal

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Review Tribunal (ART). The ART provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the ART must be made within 28 days of the day on which the applicant is given the IC review decision (see s 18(1) of the *Administrative Review Tribunal Act 2024* and rule 5(3) of the *Administrative Review Tribunal Rules 2024*). An application fee may be payable when lodging an application for review to the ART. Further information is available on the ART's website (www.art.gov.au) or by telephoning 1800 228 333.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.

Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the [Access our information](#) page on our website.

[1] That was publicly available at the time of the applicant's request but is not currently active:
<https://www.tga.gov.au/periodic/covid-19-vaccine-weekly-safety-report>. It also referred to the Database of Adverse Events Notification.

[2] FOI Act s 55D(1).

[3] Section 24A as set out in Annexure A.

[4] See, Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines).

[5] Set out in Annexure A.

[6] The applicant also raised concerns about the Department's monitoring and oversight functions, however, this falls outside the scope of this IC review and my powers under s 55K of the FOI Act.

[7] FOI Act s 55(2)(e)(ii).

[8] FOI Act s 55V.

[9] *Ryan Turner and Department of Home Affairs (Freedom of information)* [2024] AICmr 215 at [9] and the cases cited there.

[10] 'AMW' and Commonwealth Scientific and Industrial Research Organisation (Freedom of information) [2024] AICmr 175 at [8].

[11] FOI Guidelines at [3.88] – [3.89]. For further information, see FOI Guidelines at [3.85] – [3.94]; 'RD' and Comcare (Freedom of information) [2019] AICmr 61; 'PK' and Department of the Prime Minister and Cabinet (Freedom of information) [2018] AICmr 65; 'PI' and Department of Human Services (Freedom of information) [2018] AICmr 62; 'PF' and Department of Human Services (Freedom of information) [2018] AICmr 59; 'OP' and Department of Home Affairs (Freedom of information) [2018] AICmr 43; Josh Taylor and Prime Minister of Australia (Freedom of information) [2018] AICmr 42.