

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 19-23 October 2015

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Outcome/Program: Outcome 1: Prime Minister and Cabinet

Topic: Freedom of Information complaints

Senator: Ms Catryna Bilyk

Question reference number: 273

Type of question: Written

Date set by the committee for the return of answer: 4 December 2015

Number of pages: 15

Question:

Has the Department undertaken any formal training in relation to FOI or contracted any service providers to provide advice in relation to FOI matters?

Answer:

From the start of 2015 to the end of October 2015, six staff have attended formal training in relation to FOI provided by the Australian Government Solicitor on eight occasions. FOI staff have also attended the FOI Practitioners Forums hosted by the Australian Government Solicitor.

The Department has engaged contracted service providers to provide legal advice in relation to FOI matters (see answers below for more information).

Question:

If so, can an itemised list of associated costs please be provided? Can a list of the Contract Notice numbers for any relevant contracts published on Austender please be provided?

Answer:

In relation to FOI training in 2015, the associated costs to end of October 2015 are:

| | |
|--------------------------------|----------|
| Introduction to FOI | \$920.00 |
| Introduction to FOI | \$920.00 |
| FOI exemptions | \$920.00 |
| FOI & Privacy Forum (1/2 day) | \$350.00 |
| FOI & Privacy Forum (full day) | \$675.00 |
| FOI & Privacy Forum (full day) | \$675.00 |
| Introduction to FOI | \$920.00 |
| FOI next steps | \$920.00 |

In 2015, the Department engaged the Australian Government Solicitor for legal advice and to appeal two FOI decisions by the Australian Information Commissioner and the Administrative Appeals Tribunal. Relevant Contract Notice numbers are CN3280740 and CN3304789

For these two matters, \$15,994.58 was spent on seeking advice on prospects to appeal \$54,633.04 was spent on conducting the appeals.

Question:

How much has the Department spent on external lawyers in relation to FOI matters in 2015? Can a list of relevant matters and itemised costs please be provided? Can a list of the Contract Notice numbers for any relevant contracts published on Austender please be provided?

Answer:

See answer above.

Question:

Has the Department issued any written apologies to FOI applicants since 1 January 2014? If so can a copy of any apology letters please be provided, with personal identifiers of the applicant redacted in the interests of personal privacy?

Answer:

Based on an examination of the Department's FOI decisions since 1 January 2014, the department has apologised or expressed regret on 12 occasions to FOI applicants.

Extracts of the relevant 12 decisions are attached (with redactions to maintain the privacy of applicants).



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2014/028/IR

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: [REDACTED]

DECISION BY: **Pip Spence**
First Assistant Secretary
Ministerial Support Division

Request for internal review

In a letter dated 5 June 2014, received by the Department of the Prime Minister and Cabinet (the Department) on 11 June 2014, [REDACTED] (the applicant) requested internal review of a primary decision dated 2 June 2014 made by Ms Josephine Laduzko, Assistant Secretary, Ministerial and Parliamentary Support Branch, under the *Freedom of Information Act 1982* (the FOI Act).

Under section 54 of the FOI Act an applicant is entitled to apply for an internal review of a decision refusing to give access to a document in accordance with a request.

The initial FOI request and primary decision

In an email dated 7 March 2014 to the Department the applicant made a request under the FOI Act in the following terms:

[REDACTED]

Draft or duplicate documents are excluded from the scope of the request.

On 2 June 2014, the Department notified the applicant of Ms Laduzko's primary decision, which was to exempt [REDACTED] document in full.

Recognition of delay and apology

The Department takes its accountability responsibilities under the FOI Act very seriously and regrets the significant delay in responding to your original request.

The primary decision-maker had carriage of the full range of Ministerial coordination activities, and there has been a considerable increase in the number of Parliamentary and

Senate Estimates questions on notice and FOI requests that the Department is responding to. While every effort is made to work through these as quickly as we possibly can, regrettably we are not always able to meet the timeframes.

I understand in delivering the decision to you, the FOI team expressed its regret regarding the delay. I also take this opportunity to apologise for the delay in providing you with the primary decision, and assure you that decision-makers across the Department and the FOI processing officers are working through new requests as quickly as we possibly can.

Authorised decision-maker

Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the original decision) to review the decision. I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Submissions by the applicant

In requesting the internal review, the applicant has made the following submission, outlining specific objections to the primary decision:

I wish to formally request an internal review of these decisions to exempt the material under section 47E(d) and to attach more weight to factors against release under section 11A(5) of the Act.

Further, I request an explanation for the unreasonable delay of nearly three months in providing this decision.

In applying the provisions of section 47E(d), Ms Laduzko stated:

I consider that disclosure of requested material would have deleterious effect on the system by which governments are scrutinised and on the effective the operations [sic] of the Department as release of the information contained [redacted] would reveal the subject matter of the briefs.

[redacted]

Further, in applying the provisions of section 11A(5), Ms Laduzko stated:

[redacted]

[redacted]

I was particularly concerned with the following statement by Ms Laduzko:

Weighing these public interest factors for and against release, I attach less weight to the factors favouring release than the factors against release. In particular, while

at the date of decision. For the completeness, as the applicant will appreciate if she peruses the Department's disclosure log, no documents have been released or published.

The Department takes the applicant's criticism and allegations very seriously. The Department also takes its accountability responsibilities under the FOI Act very seriously. I have undertaken a fresh decision-making process in relation to this request, and I do not agree with either of these assessments. I do however regret that the applicant feels aggrieved in this way and I am advised that the applicant was provided with information about her rights of complaint.

The applicant has noted that the Australian Information Commissioner has suggested "*that it's up to the decision-makers to do all they can to process applications to accommodate the wants of the applicant as per the FOI Act and in order to clarify, they should just pick up the phone.*" Given the request was revised significantly a number of times throughout the period, it appears to me that Mr Youman has chosen to make his primary decision rather than seek to have the applicant revise the scope of the request again. As a result, I consider that further engaging with the applicant during the course of initial request to discuss or narrow scope would not have been productive.

Review and complaint rights

I understand that the applicant will be provided with information about her rights of complaint and review.



Pip Spence
First Assistant Secretary
Ministerial Support Division

6 August 2014

**Australian Government****Department of the Prime Minister and Cabinet**ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2014/092

FREEDOM OF INFORMATION ACT 1982**REQUEST BY:** [REDACTED]**DECISION BY:** Ms Josephine Laduzko
Assistant Secretary
Commonwealth-State Relations Branch**FOI request**

In an email dated 30 May 2014, the applicant made a request to the Department of the Prime Minister and Cabinet (the Department) under the *Freedom of Information Act 1982* (the FOI Act) for:

[REDACTED]

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.

Searches

The Commonwealth-State Relations Branch is the relevant area of the Department that would hold or be able to establish the existence of the document sought. Having regard to the terms of the applicant's FOI request, I made enquiries with relevant officers responsible for matters relevant to the applicant's request.

As a result of these searches, the Department located one document relevant to the applicant's request. I have decided to grant access to this document which is enclosed with this decision.

I regret the delay in communicating this decision to the applicant. While I had originally considered a conditional exemption may apply, I subsequently formed the view that the document could be released in full. This has regrettably contributed to the delay.

Deletion of irrelevant matter

Section 22 of the FOI Act provides that irrelevant matter may be deleted from a copy of a document, and access granted to such an amended copy, where it is reasonably practicable to do so, unless it is apparent that the applicant would not wish to have access to such a copy.



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2014/034

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: [REDACTED]

DECISION BY: **Bruce Taloni**
Assistant Secretary
Cabinet Secretariat

FOI request

In a letter dated 21 March 2014 the applicant made a request to the Department of the Prime Minister and Cabinet (the Department) under the *Freedom of Information Act 1982* (the FOI Act) in the following terms:

I request access to any briefs provided during January 2014 by the Department of the Prime Minister and Cabinet to the Prime Minister's Office regarding issues of Cabinet confidentiality, and also to any other documents relating to any such brief/s.

Recognition of delay and apology

The Department takes its accountability responsibilities under the FOI Act very seriously and regrets the delay in responding to the original request which was due on 20 May 2014.

I have carriage of the full range of Cabinet operation and coordination activities, and there has been a considerable increase in the number of FOI requests that the Department is responding to. Given the nature of my functions and responsibilities, I have had a number of other competing high priorities.

While every effort is made to process FOI requests as we possibly can, regrettably we are not always able to meet the timeframes. I take this opportunity to apologise for the delay in providing the applicant with this decision, and assure him that decision-makers across the Department and the FOI processing officers are working through requests as quickly as possible. Indeed, I will be putting in place mechanisms to ensure that requests do not take this long to respond to in future.

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.

Searches for documents

The Department advised the applicant on 22 August 2014 that while the proposed revision of the request was sufficient to reduce its scope to some extent, it was still not sufficient to remove the practical refusal reason. The Department advised that a request framed in the following terms could remove the practical refusal reason:

Any documents held that contain material in relation to the contract with [REDACTED] under the Indigenous Communication Programme in 2013-14.

The applicant advised the Department on 25 August 2014 that this was acceptable and the Department advised the applicant on the same day that this was sufficient to remove the practical refusal reason and that processing of the request would continue. The Department also advised the applicant that it had identified third party information relevant to the request and that in the circumstances it considered it appropriate to consult with that third party. The effect of this was to extend the decision due date to 24 September 2014.

The Department initially received a complex and detailed submission from the consulted third party on 21 September 2014. As the consideration of this submission was expected to continue past the decision due date, the Department advised the applicant that further time was required in which to finalise its decision. The applicant agreed to an extension of time for processing of the request on 22 September 2014 under section 15AA of the FOI Act, to 10 October 2014.

While considering the third party submission, it became apparent that due to a miscommunication, the initial submission had been based on an incorrect assumption. It therefore became necessary to request the consulted third party to make another submission. The revised submission was received on 9 October 2014 and raised similarly complex issues to the previous one. As the applicant had indicated he was not prepared to agree to any further extensions, regrettably in light of the miscommunication and the second submission having been received the day before the decision due date, notification of this decision is overdue.

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.

Searches for relevant documents

The Infrastructure Branch in the Indigenous Affairs Group is the relevant area of the Department that would hold or be able to establish the existence of any documents relevant to the applicant's request. Having regard to the terms of the applicant's FOI request, I made enquiries with officers responsible for relevant matters. Searches of the Department's records identified 19 documents falling within the scope of the revised request within the Department's possession.

Material taken into account

I have taken the following material into account in making my decision:

- the content of the 19 documents that fall within the scope of the request;
- the FOI Act (including, in particular, sections 22, 47F and 47G);
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines); and



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2014/186

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: [REDACTED]

DECISION BY: Philippa Lynch
First Assistant Secretary
Government Division

FOI request

In an email dated 24 October 2014 the applicant made a request to the Department of the Prime Minister and Cabinet (the Department) under the *Freedom of Information Act 1982* (the FOI Act) in the following terms:



My request excludes duplicate documents.

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.

Searches

I asked relevant officers in the Department's Government Division and in the Secretary's office to identify potentially relevant documents. As a result four relevant documents were located.

Decision

I have decided to grant access to three documents in full and one document in part. The documents are identified in the schedule at Attachment A. I regret the delay in finalising the decision.

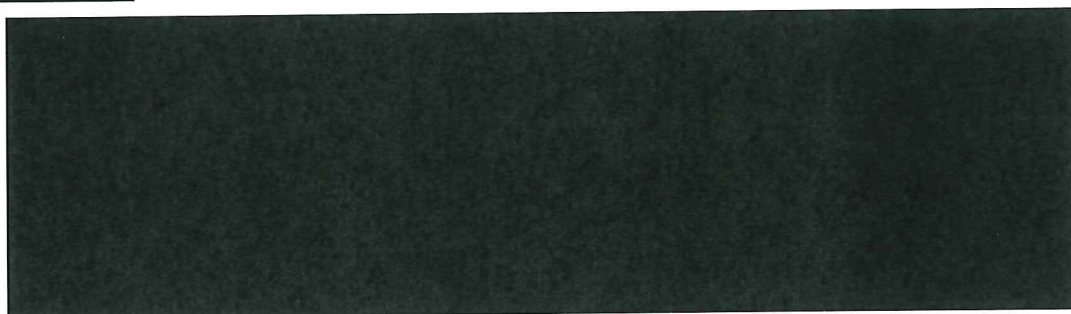
**Australian Government****Department of the Prime Minister and Cabinet**ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2014/186 IR

FREEDOM OF INFORMATION ACT 1982**REQUEST BY:** [REDACTED]**DECISION BY:** Richard Eccles
Deputy Secretary**Request for internal review**

In a letter dated 23 December 2014, the applicant, [REDACTED] sought an internal review under the *Freedom of Information Act 1982* (the FOI Act) of the access decision made by Ms Philippa Lynch on 12 December 2014 (at Attachment A) concerning [REDACTED] freedom of information request in the following terms:



My request excludes duplicate documents.

Ms Lynch granted access to three documents in full and one document in part.

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.

Decision

I have decided to affirm the decision under review. My reasons for decision appear below.

I apologise for the delay in providing this decision.

**Australian Government****Department of the Prime Minister and Cabinet**ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2014/142

FREEDOM OF INFORMATION ACT 1982**APPLICANT:** [REDACTED]**DECISION BY:** Ms Philippa Lynch
First Assistant Secretary
Government Division**FOI request**

In an email dated 27 August 2014, the applicant made a request to the Department of the Prime Minister and Cabinet (the Department) under the *Freedom of Information Act 1982* (the FOI Act) for:

I am seeking access to credit card statements since 9 September 2013 relating to the Secretary's expenses. Please also include the related receipts.

As the applicant has since advised that she would be pleased to receive a document describing the information requested in summary form, a summary document has been created accordingly.

For completeness I note the Secretary referred to by the applicant is former Secretary, Dr Ian Watt AO.

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.

Searches

The following steps were undertaken to locate documents relevant to the request:

- searches were undertaken of relevant credit card statements of the Secretary and officers in the Office of the Secretary.

Decision

I have decided to grant access in full to the summary document which is enclosed with this decision. I apologise for the delay in providing this decision.



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2014/219

FREEDOM OF INFORMATION ACT 1982

REQUEST BY:



DECISION BY: Paula Ganly
Assistant Secretary
Ceremonial and Hospitality Branch

The FOI request

In an email dated 12 December 2014 the applicant made a request to the Department of the Prime Minister and Cabinet (the Department) under the *Freedom of Information Act 1982* (the FOI Act) in the following terms:

Regarding the MORNING TEA IN HONOUR OF AFP AND ADF PERSONNEL held by the government in Parliament House on October 26th, would you please provide:

1. The list of all invitees to the event.
2. Details on how invitees were selected to attend the event.
3. Which Government Members and Senators attended the event.
4. Which non-Government Members and Senators attended the event.
5. A copy of the invite to the event.
6. A list of speakers at the event.
7. The full cost of the event, including catering.

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.

I regret the delay in finalising the applicant's request.

Steps taken to find relevant documents

Having regard to where potentially relevant documents might be held, the following locations were searched in the Department:

- the computer network drive for the Ceremonial and Hospitality Branch;
- email accounts of relevant officers in the Ceremonial and Hospitality Branch.

**Australian Government****Department of the Prime Minister and Cabinet**ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2015/074

FREEDOM OF INFORMATION ACT 1982**APPLICANT:** [REDACTED]**DECISION BY:** Pip Spence
First Assistant Secretary
Ministerial Support Division

On behalf of the Department of the Prime Minister and Cabinet (the Department), I apologise to [REDACTED] for the delay in finalising this request. The delay was principally caused by changes in the decision maker for the request and consultations with third parties.

The FOI request

In an email dated 2 April 2015, the applicant made a request to the Department under the *Freedom of Information Act 1982* (FOI Act), as follows:

**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.

Searches for relevant documents

Having regard to my knowledge of where documents potentially relevant to the applicant's request would be held, if they existed, the following steps were undertaken to locate documents relevant to the request:

- A search of hard copy files;
- A search of relevant computer files; and
- Inquiries were made of relevant officers of the Department who would be aware of any relevant documents.



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2015/007

FREEDOM OF INFORMATION ACT 1982

APPLICANT: [REDACTED]

DECISION BY: Mr Peter Arnaudo
Assistant Secretary
Honours, Symbols and Legal Policy Branch

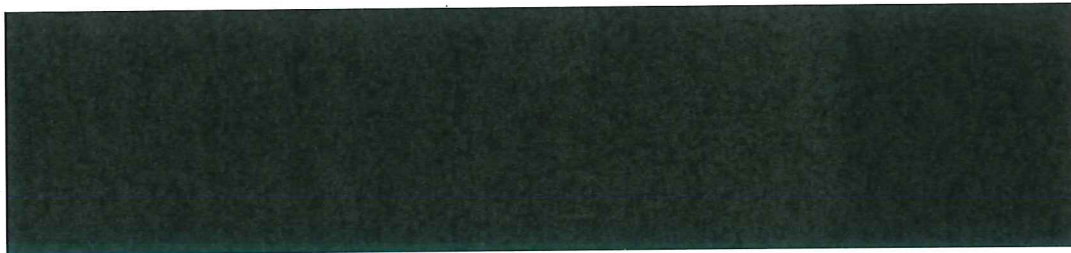
On behalf of the Department of the Prime Minister and Cabinet (the Department), I apologise to [REDACTED] for the delay in finalising this FOI request.

As set out in these reasons, a significant reason for the delay involved a misunderstanding between the Department and [REDACTED] about whether this request (to the then Prime Minister which was then transferred to the Department) was withdrawn following the processing of an identical request for documents by [REDACTED] to the Department. Upon realising that [REDACTED] did not consider this request had been withdrawn the Department recommenced processing it.

FOI request

In an email dated 17 December 2014, [REDACTED] made a request for documents to the Prime Minister under the *Freedom of Information Act 1982* (the FOI Act). A copy of the terms of the request and the emails between the Department of the Prime Minister and Cabinet and [REDACTED] are set out in Attachment A.

Following negotiations with [REDACTED] regarding the scope of the request to the Prime Minister, I consider that the scope was for:



Following advice from the then Prime Minister's office that it did not hold any documents relevant to the request not already held by the Department, the Department advised the applicant (by email on 21 January 2015) that the request to then Prime Minister had been transferred to the Department.

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Australian Government

Department of the Prime Minister and Cabinet

Michael Thawley AO
Secretary

Ref:EC15/649



I write in response to your letter of 29 September 2015 complaining about the Department's handling of your Freedom of Information (FOI) request. I have read your letter carefully and have also examined the conduct of the Department's officers as you asked.

I acknowledge it took a long time to provide a response. This was the result of a number of factors, including the need to consult various third parties involved.

The delay is unfortunate and regretted. The Department takes seriously its obligations under the FOI Act. Relevant officers are being counselled on the importance of dealing with FOI matters expeditiously and keeping applicants informed during the process.

I hope we can do better in future.

*Yours sincerely
Michael Thawley*

Michael Thawley
19 October 2015

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