



OFFICIAL

Freedom of Information (FOI) request

Notice of Decision

Reference: FOI/2023/069



Dear 

I refer to your email of 3 February and 7 March 2023 in which you made two FOI requests under the *Freedom of Information Act 1982* (the FOI Act).

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

Transfer of request

On 2 March 2023, your request was transferred from the Office of the Prime Minister to the Department of the Prime Minister and Cabinet (the Department) under section 16 of the FOI Act. The Department notified you of this transfer on 3 March 2023.

Scope of request

You set out your requests in the following terms:

1. *I request a copy of the oath or affirmation of allegiance as required by section forty two of the Commonwealth of Australia Constitution Act made and subscribed to by Prime Minister Anthony Albanese, as provided in the Schedule consistent with the note found within the Schedule prior to the Minister taking his position within the Parliament of the Commonwealth as prescribed by section one.*
 - a. *If the first requested document cannot be found I request such document showing any undertaking that the Australian Prime Minister Anthony Albanese made prior to taking his position in the Parliament of the Commonwealth.*

- b. If the first requested document cannot be found I request such information that provides the reason the oath or affirmation was not in accordance to the terms in the first request.*
2. *I request the instrument of waiver the Prime Minister Mr Albanese relies on to be exempt from the performance of clause 5 of the Constitution Act, specifically the oath requirements found within the constitution binding on all Ministers by command of section 42, consistent with the Schedule and note to the Schedule prior to the Minister taking his position as Minister and Prime Minister within the Parliament of the Commonwealth.*

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.

Material taken into account

In reaching my decision I referred to the following:

- the terms of your request
- the FOI Act
- the Guidelines issued by the Information Commissioner¹ (the FOI Guidelines)

Decision

I have decided to refuse access under section 24A of the FOI Act as the Department does not hold documents that would fall subject to the terms of your request.

Under section 15(4) of the FOI Act I am required to direct you to an agency that is more closely connected to the subject matter and who may be able to assist you. Please refer to the information I have included below under 'Other Information'

Reason for decision

My findings of fact and reasons for deciding that certain information is irrelevant is set out below.

1. Documents do not exist

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

1. *An agency or Minister may refuse a request for access to a document if:*

¹ s 93A of the FOI Act

- 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 is meant within the FOI Act to undertake 'all reasonable steps' I have had regard to the Guidelines which discuss the meaning of 'reasonable' in s 24A(1)(a), and that identifying documents includes such an effort as to be appropriate or suitable to the circumstances.

Having regard to the role and function of the Parliamentary and Government Branch within the Department, the types of records prepared and which are in our possession, I am satisfied that we do not hold documents that meet the terms of your request. Section 42 of the Constitution provides that "Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution. As such, the oath or affirmation subscribed by each senator and member is a matter for the Senate and the House of Representatives.

I am satisfied that these steps are appropriate and suitable given the circumstances and that no documents, within the possession of the Department of the Prime Minister and Cabinet have been identified. Accordingly, I am refusing your request for access as documents do not exist.

Other Information

Evidence of Members sworn to Parliament are published by Australian Parliament House and can be accessed here [Search Hansard – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/Research/Hansard).

With regard to the subject of your request, you may wish to consider the following research note, as it may be relevant: [Oaths and affirmations made by the executive and members of federal parliament since 1901 – Parliament of Australia](#).

The Department has previously released a copy of the Prime Minister's affirmation on being appointed as Prime Minister. This document may be relevant to your request.

See: [foi-2023-004.pdf \(pmc.gov.au\)](#); and [foi-2022-247-documents-for-release.pdf \(pmc.gov.au\)](#)

Review rights

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

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days after the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days from the date it is received.

Applications for review should be sent to foi@pmc.gov.au.

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.

More information about Information Commissioner review is available [here](#).²

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. 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. More information about complaints is available [here](#).³

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

Yours sincerely



David Belgrove
A/g Assistant Secretary
Parliamentary and Government Branch
Department of the Prime Minister and Cabinet
23 March 2023

² <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review>

³ <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint>