



FOI16/184; 16/12848
FOI16/185; 16/12846

19 December 2016

[REDACTED]
[REDACTED]
[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

Freedom of Information Requests no. FOI16/184 and FOI16/185

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary of your request and my decision

I, Jeff Murphy, Acting Special Adviser, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests made to the Attorney-General's Department.

On 5 December 2016, you requested access to documents in respect of instruments or other documents of the Australia Constitution. Specifically, you asked for:

*"The existence of an instrument and or document that provides for any entity to create, make, legislate, enact laws other than the Parliament of the Commonwealth as per section 1 of the Commonwealth of Australia Constitution Act that states: The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called **The Parliament**, or **The Parliament of the Commonwealth***

To clarify the request, consider the following:

1-These instruments sought are not readily apparent in the public domain

2- ACTS INTERPRETATION ACT 1901 - SECT 15A - Construction of Acts to be subject to Constitution

Every Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been

construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

3-It is sought specifically only the precise factual findings of such instruments and or documents described above"

Your request was acknowledged on 9 December 2016.

Subparagraph 24A(1)(b)(ii) of the FOI Act provides:

- (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.*

The Australian Constitution establishes the Australian States as part of the Commonwealth of Australia. The States are bound by the Australian Constitution, and the constitutions of the States must be read subject to the Australian Constitution (sections 106 and 107). Under the constitutions of each of the States, a State Parliament can make laws on any subject of relevance to that particular State. Subject to a few exceptions, the Australian Constitution does not confine the matters about which the States may make laws. The legislatures of the self-governing Territories also have the power to make laws. Other than the Australian Constitution which is publicly available, there are no relevant Commonwealth documents.

It follows that the Attorney-General's Department has no relevant documents and I must refuse your request.

Material taken into account

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

- the content of the documents that would fall within the scope of your request
- the FOI Act (specifically section 24A, which allows a request for documents to be refused if the documents do not exist within the agency to whom the request is made), and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days

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

email: foi@ag.gov.au
post: Freedom of Information and Privacy Section
Strategy and Delivery Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

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.

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

online: <https://forms.business.gov.au/aba/oaic/foi-review/>
email: enquiries@oaic.gov.au
post: GPO Box 5218, SYDNEY NSW 2001
in person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

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

Questions about this decision

If you wish to discuss this decision, please contact Quentin, FOI case manager, by telephone on (02) 6141 6666 or by email foi@ag.gov.au.

Yours sincerely



Jeff Murphy
Acting Special Adviser
Office of Constitutional Law