



**Australian Government**  

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**Australian Public Service Commission**

Anonymous

By email: [foi-request-4986-fa9593b0.dbung@aleeas.com](mailto:foi-request-4986-fa9593b0.dbung@aleeas.com)

Our reference: LEX 511

Dear Anonymous

**Freedom of Information request**

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on 11 March 2023 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from [www.legislation.gov.au](http://www.legislation.gov.au)

**Documents relevant to your request**

3. You requested access to documents in the following terms:

*a) any and all documents demonstrating that Statutory Agencies, as distinguished from the APS employees, Agency Heads and Statutory Office Holders that make them up, are bound by the legal obligations set out in subsection 10A(2) of the Public Service Act 1999 (Cth);*

*b) any and all documents demonstrating that Statutory Agencies, as distinguished from the APS employees, Agency Heads and Statutory Office Holders that make them up, are legally capable of contravening the legal obligations set out in subsection 10A(2) of the Public Service Act 1999 (Cth);*

*c) any and all documents, including notes and reasons, that might shine a light on why Kate McMullan found, on the balance of probabilities, and in the light of her duty to make findings of fact on logically probative and relevant evidence, the “FCA”, a Statutory Agency, responsible for “promoting Ms Wu into this position” and, thus, “not ... comply[ing] with the APS Employment Principles under subsection 10A(2) of the PS Act ...”, even though the logically probative and relevant evidence demonstrates that:*

*i) Caitlin Wu was selected for promotion to the Executive Level 1 classified National Court Framework Registrar role in the Federal Court of Australia, ahead of “a field of candidates all of whom were admitted as legal practitioners”, by Sia Lagos, David Pringle and Andrea Jarratt on 2 December 2016; and*

*ii) Sia Lagos, as the Agency Head's delegate, endorsed the selection panel's recommendation and "[a]pprove[d] Caitlin Wu as the successful candidate" on 2 December 2016.*

4. The context you provided for the scope of your request is too lengthy to reproduce here, noting it is contained in your email request.

### **Decision on your FOI request**

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
6. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents meeting the description of what you have asked for can be found or exist.
7. As such, I refuse your request for access to documents pursuant to section 24A of the FOI Act.

### **Reasons for decision**

*Section 24A – documents that cannot be found or do not exist*

8. Subsection 24A(1) 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 or Minister's possession but cannot be found; or
      - (ii) does not exist.
9. The Office of the Australian Information Commissioner (OAIC) has issued guidelines pursuant to section 93A of the FOI Act. At paragraphs 3.88 to 3.93 of these guidelines, the OAIC provides guidance as to the meaning of the term 'all reasonable steps' in subsection 24A(1).
10. Having regard to OAIC's guidance, I have taken into account the subject matter of your request and consulted with colleagues in the Employment Policy team within the Commission.
11. The Employment Policy team conducted searches in the Commission's record management systems (TRIM, ShareHub, and Outlook) using the terms 'statutory agency 10A' and 'statutory agency section 10A.' No relevant documents were identified.
12. Accordingly, I have decided to refuse your request for access under section 24A of the FOI Act.

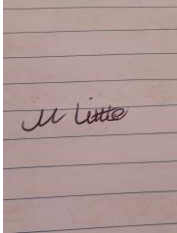
### **Contacts**

13. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3500 or by email at [foi@apsc.gov.au](mailto:foi@apsc.gov.au)

**Review rights**

14. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A.**

Yours sincerely

A photograph of a handwritten signature on a piece of lined paper. The signature is written in cursive and reads "M Little". The paper has horizontal lines and is slightly aged.

Mitchell Little

Authorised FOI decision maker

11 April 2023

## **Rights of Review**

### **Asking for a full explanation of a Freedom of Information decision**

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

### **Seeking review of a Freedom of Information decision**

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

### **Applying for a review by an Internal Review Officer**

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

**Email:**            [foi@apsc.gov.au](mailto:foi@apsc.gov.au)  
**Post:**             The FOI Officer  
                         Australian Public Service Commission  
                         B Block, Treasury Building  
                         GPO Box 3176  
                         Parkes Place West  
                         PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

### **Applying for external review by the Australian Information Commissioner**

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application:**

Online: [www.oaic.gov.au](http://www.oaic.gov.au)

Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

## **Complaints to the Information Commissioner and Commonwealth Ombudsman**

### ***Information Commissioner***

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: [www.oaic.gov.au](http://www.oaic.gov.au)

### ***Commonwealth Ombudsman***

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)