



Mr [REDACTED]

By email only to: [REDACTED]

Our reference: 1-Y3EHA14
Contact Officer: Sandi Jayawardena
Phone: 08 8228 4979
Date: 29 June 2023

Decision regarding your Freedom of Information request

Dear [REDACTED]

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

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

On 17 June 2023, you requested access to documents relating to the following:

1. *Document relied upon that demonstrates the instrument used to create the Australian Taxation Office*
2. *Document relied upon that demonstrates the execution (date, day, time) for the Australian Taxation Office*
3. *Document relied upon that demonstrates the Australian Taxation Office was legally registered*
4. *Document relied upon that demonstrates the Australian Taxation Office was Gazetted as a legal entity*
5. *Document relied upon that demonstrates the Trust Deed between Australian Taxation Office and Zarina Khan (named organisation representative ASIC page)*

Decision

I have decided to refuse you access to any documents that may fall within the scope of your request pursuant to sections 24A and 38 of the FOI Act.

Material taken into account

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

- the terms of your request;
- the FOI Act (specifically sections 4, 11, 24A, and 38);
- the *Taxation Administration Act 1953 (the TAA)*; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Reasons for decision

Points 1 - 4

Under section 11 of the FOI Act, you have the right to obtain access to a 'document of an agency'. This is relevantly defined in section 4 of the FOI Act as a document that is in the possession of an agency. The definition of 'document' excludes material maintained for reference purposes that is otherwise publicly available.

The documents you seek in points 1 to 4 of your FOI request are materials held by the ATO for reference purposes which are otherwise publicly available and as such, are not caught by the FOI Act.

Information about the ATO's establishment is available at <https://www.ato.gov.au/about-ato/who-we-are/our-history/>. Additionally, Australian government gazette notices are available online on the National Library of Australia website at <https://www.nla.gov.au/>.

All Australian government legislation is also publicly available online at <http://www.legislation.gov.au>.

Accordingly, under subparagraph 24A(1)(b)(ii) of the FOI Act, I am refusing you access to documents falling within the scope of points 1 to 4 of your request because no documents subject to the FOI Act are held by the ATO.

Point 5

A document is exempt under section 38 of the FOI Act if disclosure of the document, or information contained in the document, is prohibited under a secrecy provision set out in Schedule 3 to the FOI Act. Relevantly, section 355-25 in Schedule 1 to the TAA is specified in Schedule 3 to the FOI Act. Section 355-25 prohibits me from disclosing protected information to an entity other than the entity to whom the information relates or an entity covered by subsection 355-25(2) in Schedule 1 to the TAA.

'Protected information' is defined in section 355-30 of Schedule 1 to the TAA as information which was disclosed or obtained under or for the purposes of a taxation law, which relates to the affairs of an entity, and which identifies, or is reasonably capable of being used to identify, the entity.

I am satisfied that, should any documents exist in relation to point 5 of your request, they would contain information relating to the affairs of identifiable entities that was obtained by ATO officers for the purposes of taxation laws, and that any such documents would contain 'protected information' about the entities.

I am not satisfied that you are an entity to whom the 'protected information' relates or a covered entity in relation to any such entity (as defined by subsection 355-25(2) of Schedule 1 to the TAA). As a result, I am prohibited by section 355-25 of Schedule 1 to the TAA from disclosing 'protected information' about these entities to you.

Accordingly, I find that if there are any documents that fall within the scope of point 5 of your request, any such documents would be exempt from disclosure to you under section 38 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 ATO for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, quoting our reference number at the top of this letter, and be lodged in one of the following ways:

email: FOI@ato.gov.au
post: Australian Taxation Office, Office of General Counsel, GPO Box 4889, Sydney NSW 2001.

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. If you have not been informed of the outcome of the review within that time, you may apply to the Australian Information Commissioner under section 54L of the FOI Act.

Australian Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the OAIC 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/smartforms/servlet/SmartForm.html?formCode=ICR_10
email: foidr@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001

Visit the OAIC website, <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>, for more information about Australian Information Commissioner review.

Complaints

Any complaint about the processing of your FOI request can be forwarded to the OAIC. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1
email: foidr@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001

The Information Commissioner can be contacted on 1300 363 992.

Questions about this decision

If you have any questions, please phone 13 28 69 between 8.00am and 5.00pm, Monday to Friday, and ask for Sandi Jayawardena on extension 84979.

Yours sincerely



Sandi Jayawardena

Lawyer

Office of General Counsel
Australian Taxation Office