



OFFICIAL

Freedom of Information (FOI) request

Notice of Decision

Reference: FOI/2023/336

To Mr Sean Hargraves

By email: seanhargraves2019@gmail.com

Dear Mr Hargraves

I refer to your request to the Department of the Prime Minister and Cabinet (the Department), under the *Freedom of Information Act 1982* (the FOI Act), received on 14 November 2023.

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

Scope of request

You set out your request in the following terms:

I request the following documents:

- I request the documents that provide for the Assent to the Parliament of United Kingdom, Canada, New Zealand, South Africa and Sri Lanka to the Royal Styles and Titles Act 1973 for the Commonwealth of Australia for the alteration in the law touching the Queens title consistent with the Statute of Westminster 1931 an Act adopted by the Parliament of United Kingdom, Canada, New Zealand, South Africa and Sri Lanka, consistent with the Royal Styles and Titles Act 1953.*
- I request the document that demonstrates the enumerated head of power under the Commonwealth of Australia Constitution Act 1901 and the Commonwealth of Australia Constitution for the Parliament to create a new title for the Queen or King that overcomes Clause 2 and 5.*

3. *I request the document that demonstrates the identity and true title of the King that Prime Minister Anthony Norman Albanese swore allegiance too following the Coronation of King Charles the Third on 06 March 2023.*
4. *I request the document that demonstrates that Prime Minister Anthony Albanese swore true allegiance to King Charles the Third.*
5. *I request the document that demonstrates under what Office of the Crown the current Australian Parliament/Government/Judiciary is lawfully constituted.*
6. *I request the document that demonstrates the Governor-General's portfolio can be absorbed by the Prime Minister and Cabinet Office, in accordance with Letters Patent for the Office of Governor General 1900, Commonwealth of Australia Constitution Act 1901 and Commonwealth of Australia Constitution.*

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 have had regard to the following:

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

Decision

I have decided to refuse your request under section 24A(1) of the FOI Act, on the grounds that the Department has taken all reasonable steps to locate the documents you have requested, and those documents do not exist.

The Department is able to provide you with additional information that may be of assistance – please see heading “Additional Information” below.

¹ Section 93A of the FOI Act

Reason for decision

My findings of fact and reasons for deciding to refuse your request for access are set out below.

1. Documents cannot be found or do not exist

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

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.

In determining what the FOI Act means with respect to 'all reasonable steps', I have had regard to the Guidelines which discuss the meaning of 'reasonable' in section 24A(1)(a). It is not designed to go beyond the limit assigned by reason, not to be extravagant or excessive, rather to be moderate and of such an effort to be appropriate or suitable to the circumstances².

The Department has undertaken inquiries with the Legal Policy area regarding any relevant records that would meet the terms of your request. They advised, based on their knowledge of the subject matter connected of the requested documents that there were no documents found to be in the possession of the Department.

In addition, based on my knowledge of the subject matter connected to your FOI request, and in my role as A/g Assistant Secretary, Legal Policy Branch, I am satisfied that the Department does not hold the documents you have requested.

I am satisfied that the measures taken by the Department to locate documents in response to your request under the FOI Act, as outline above, are appropriate and suitable given the circumstances. After taking all reasonable steps to find the documents, no documents relevant to your request have been identified.

Accordingly, I am refusing your request for access under section 24A(1) of the FOI Act as the documents you have requested do not exist.

The Department has undertaken further inquiries and sought advice from another government agency in order to provide you with the below additional information that may satisfy your request.

² Paragraph 3.88 of the FOI Guidelines

Additional Information

The Royal Style and Titles Act 1973 (Cth) determined Queen Elizabeth II's title for use in relation to Australia and its territories, as Queen of Australia. There is no legal requirement to obtain the consent of other Commonwealth countries for any change to the royal style and titles in Australia.

The preamble to the Commonwealth of Australia Constitution Act 1900 (Imp) refers to the historical fact of the agreement to federate under the 'Crown of the United Kingdom of Great Britain and Ireland'. Covering clause 2 of that Act states that references to 'the Queen' extend to 'Her Majesty's heirs and successors in the sovereignty of the United Kingdom'. The required oath and affirmation set out in the schedule to the Constitution, which members of the Commonwealth Parliament must make under section 42 of the Constitution, refer to 'Her Majesty Queen Victoria, Her heirs and successors according to law.' The schedule states 'The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time'. Following the death of Queen Elizabeth II in September 2022, references in the Constitution to Queen Victoria now include King Charles III.

The swearing of an oath or making of an affirmation as a member of parliament in accordance with section 42 of the Constitution is distinct from the process of appointment as a minister under section 64 of the Constitution. The Prime Minister of the day determines the form of the oath and affirmation for ministers. There is no legal requirement for that oath or affirmation to include a reference to the Crown. There is also no requirement for Members of Parliament to swear allegiance to new sovereigns during a parliamentary term.

Under section 2 of the Constitution, the Sovereign is empowered to appoint the Governor-General as their representative in the Commonwealth. Under section 61, the 'executive' power of the Commonwealth is vested in the Sovereign and is exercisable by the Governor-General. The Office of the Official Secretary of the Governor-General is a non-corporate Commonwealth entity within the portfolio of, but separate to, the Department of the Prime Minister and Cabinet under the Public Governance, Performance and Accountability Act 2013. The Office provides support to the Governor-General to fulfil their duties.

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, please attach the reasons why you disagree with the decision.

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](#).³

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. We may be able to rectify the problem. 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](#).⁴

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



Branko Ananijevski
A/g Assistant Secretary
Legal Policy Branch
Department of the Prime Minister and Cabinet
14 December 2023

³ <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

⁴ <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>