



The Hon Michelle Rowland MP

**Minister for Communications
Federal Member for Greenway**

Our reference: FOI 23-221
Your Reference: MR23/00623

s22(1)(a)(ii)

Intake and Early Resolution Team
Freedom of Information Regulatory Branch
Office of the Australian Information Commissioner
By email: foidr@oaic.gov.au

Dear s22(1)(a)(ii)

Response to Notice of Information Commissioner Review and request for documents

I refer to your Notice of IC Review applicant and request for documents dated 29 June 2023 and note that the Office of the Australian Information Commissioner (OAIC) has received an application for Information Commissioner review of a decision made by the Minister for Communications under the *Freedom of Information Act 1982* (FOI Act).

1 Original Decision

On 30 March 2023, the applicant submitted a request to the Minister for Communications seeking access to the following documents:

Copies of any documents relating to consideration or decisions to allocate funding to 54 target locations under the Improving Mobile Coverage Round of the Mobile Black Spot Program – announced in the Minister’s media statement of 2 February 2023 on the opening of the IMCR round to ‘54 target locations’. This includes any internal communication between the Minister and/or Ministerial staff (including adviser notes, emails, texts, messages, WhatsApp or Signal messages) and any documents prepared or amended by the Minister or her staff (advice, briefings, talking points).

The timeframe is from 1 June 2022 to 30 March 2023.

On 28 April 2023, a decision was issued to the applicant providing background information and advising that documents relevant to the request would fall outside the scope of this request.

2 Scope of IC Review

On 21 July 2021, the OAIC notified the Minister that the applicant requested a review of the Original Decision by the Information Commissioner.

The basis for this review is as follows:

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We believe the Minister's office has paid lip service to this FOI request. This was a very specific and narrow request, seeking documents relating to any consideration or decisions to allocate funding to 54 target locations under the Improving Mobile Coverage Round in Round 6 of the Mobile Black Spot Program. It is clear that there has been no proper search of documents within the Minister's office carried out. The decision-maker has stated that this matter was considered and decided prior to Labor forming Government, during the period of opposition and before the election on 21 May 2022. But of course, to implement this policy would have required deliberations with the Minister's office including department briefs and therefore documents will exist there. We believe the excuses provided to deny access to the documents are not justified and do not meet the requirements to provide documents under the FOI Act. This would not be a large task for the Minister's office. There would be a relatively small number of staff with emails, briefing notes and other documents in relation to this matter. We request that the Information Commissioner instruct the Minister's Office to carry out a proper search of documents and to provide those under the terms of the FOI request.

3 Response to request for information

In accordance with paragraph 10.100 of the FOI Guidelines, the Minister's office is providing the following information to the OAIC to assist the Information Commissioner with this review:

- (a) A copy of the applicant's FOI request (**Attachment A**)
- (b) A copy of supplementary material in support of the decision maker's decision. (**Attachment B**)
- (c) A copy of documents related to the fulfillment of the Government's election commitments for the Improving Mobile Coverage Round provided to the applicant by the DITRDCA (**Attachment C**)
- (d) Other relevant information that the decision maker wishes to provide in support of its decision is included at paragraph 4 below.

4 Submissions in support of the original decision

The FOI request seeks information specifically related to "consideration or decisions to allocate funding to 54 target locations under the Improving Mobile Coverage Round".

The FOI guidelines state that a request "should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used" [at 3.54].

In this case the terms of the request are clear and unambiguous – it is narrowly targeted at the allocation decisions themselves, and is not directed to the implementation of the decisions or rollout of the program.

As outlined in the decision maker's response, the locations under this program were considered and decided prior to the search period of 1 June 2022 to 30 March 2023. The locations were identified by the Labor Party, when it was in opposition and before it had access to a Government department.

The FOI guidelines also state that under the FOI Act, an applicant cannot access documents held by a Minister that do not relate to the affairs of an agency, including documents which do not deal with the Minister's portfolio responsibilities. As this request goes to decisions that were made prior to the Minister holding office, the original decision relating to this request should be upheld.

The decision maker provided the applicant with a copy of the Labor Party's pre-election costings, which are publicly available and included in **Attachment B**. A line item in this document demonstrates that the Labor party had committed \$40 million for the Improving Mobile Coverage Round before forming Government. **Attachment B** also includes examples where local candidates for the Labor Party made local announcements prior to the election, committing to invest in improved mobile coverage.

In a recent Senate Estimates hearing, the Department responded to questions by Senators in the Coalition party on this matter. In relation to a question about the selection of sites, the Deputy Secretary of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) responded as follows:

Mr Windeyer: The selection of the sites was done by the then opposition. We had no role in the selection of the sites whatsoever; they were all election commitments.

Further, when the Department was asked whether the department was involved in making the commitments to fund the sites, the following response was given.

CHAIR: Thank you. I have a few questions about the improving mobile coverage round. As Senator Hughes has referred to some of the commitments made by Labor at the 2022 election, were those run past you?

Mr Windeyer: Not at the time. They were selected by the then opposition, and we obviously had no engagement with the opposition in their consideration or generation of election commitments.

CHAIR: Would it be normal for an opposition to talk to a department about election commitments prior to an election?

Mr Windeyer: It does not happen.

CHAIR: So there would be no way that Labor would have been able to come to you and say: 'We've got this list of places. What do you think'?

Mr Windeyer: No, that's right. There wouldn't have been any opportunity.

As the OAIC may be aware, what is being suggested publicly by the applicant is an improper process by which sites were chosen contrary to department advice. However the evidence above demonstrates this is a plainly misleading and inaccurate representation.

Further to this, in the decision maker's original letter, it was acknowledged that once Labor formed Government, as is typical across all agencies, the department began significant work to fulfil the new Government's election commitments.

Documents within the time period that relate to the fulfillment of these election commitments are included in **Attachment C**, which form part of another related FOI request made to the Department with the following scope:

"Ministerial Briefs signed by the Minister for Communications formalising round 6 (Improving Mobile Coverage Round) under the Mobile Black Spot Program, including an attachments, excluding Meeting/Event Briefs" and;

"Correspondence between the Department and the Office of the Minister for Communication's relevant key advisor/s or Chief of Staff detailing the operation, management, or delivery of round 6 (Improving Mobile Coverage Round) under the Mobile Black Spot Program, excluding media related documents."

These documents demonstrate the Department undertook significant work and deliberations, and consultation with stakeholders to inform delivery of the commitments and developed draft and final guidelines for the program as well as preparation for the October budget to confirm funding committed during the election.

We hope this satisfies the Commissioner in providing a fuller context to the decision and we are happy to assist with any further inquiries in relation to the rollout of this program.

Further information

Please note that the Department of Infrastructure, Transport, Regional Development, Communications and the Arts provides administrative support to the Minister's Office in relation to FOI matters. If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

s22(1)(a)(ii)

s22(1)(a)(ii)

16 August 2023

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s22(1)(a)(ii)

From: FOI
Sent: Monday, 12 February 2024 10:22 AM
To: OAIC - FOI DR
Subject: RE: FOI MO 23-221 - MR23/00623 - Notice of IC review and request for documents [SEC=OFFICIAL]

OFFICIAL

Good morning s22(1)(a)

Thank you for your email of 22 January 2024, in which you have requested the following:

- A copy of any document that records searches conducted, including if applicable:
 - Notes kept by individuals conducting searches
 - Correspondence between the FOI decision maker and individuals who conducted searches
 - Any other records of searches or recorded consideration of where to search

The Department provides administrative support to the Minister's Office in relation to FOI matters, and we are providing this response on behalf of the Minister's Office.

On 16 August 2023, the Minister's Office made submissions to the OAIC in relation to this matter, clearly setting out the background to this request, including that the decisions referred to in the applicant's FOI request were made prior to the Minister holding office as the Minister, and as such, any documents relevant to this request are not 'Official documents of the Minister' and are outside the scope of the FOI Act.

As such, the Minister's Office has no further records relating to searches conducted to provide to the OAIC.

I trust that this assists the Commissioner in this matter.

With kind regards

s22(1)(a)(ii)

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Department of Infrastructure, Transport, Regional Development, Communications and the Arts
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infrastructure.gov.au

*I would like to acknowledge the traditional custodians of this land on which we meet, work and live.
 I recognise and respect their continuing connection to the land, waters and communities.
 I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

OFFICIAL

From: OAIC - FOI DR
Sent: Monday, 22 January 2024 9:10 AM
To: FOI
Subject: RE: RMR23/00623 - Notice of IC review and request for documents - Part 1 of 4 [SEC=OFFICIAL]

OAIC reference: MR23/00623

Dear s22(1)(a)(ii),

Thank you for your emails.

As set out in the 'Notice of IC review application and request for documents', issued on 29 June 2023, the applicant contests that further documents exist within the scope of their request.

In accordance with paragraph 10.100 of the OAIC's FOI Guidelines, we therefore ask that you provide us with the following outstanding information:

- A copy of any document that records searches conducted, including if applicable:
 - Notes kept by individuals conducting searches
 - Correspondence between the FOI decision maker and individuals who conducted searches
 - Any other records of searches or recorded consideration of where to search

We ask that you provide the above information to foidr@oaic.gov.au by **12 February 2024**.

Kind regards



s22(1)(a)(ii)
 Paralegal | FOI Branch
 Office of the Australian Information Commissioner
 Sydney | GPO Box 5288 Sydney NSW 2001
 P s22(1)(a)(ii) E foidr@oaic.gov.au

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

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From: FOI
Sent: Wednesday, August 16, 2023 6:44 PM
To: OAIC - FOI DR
Cc: FOI
Subject: RMR23/00623 - Notice of IC review and request for documents - Part 1 of 4 [SEC=OFFICIAL]

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OFFICIAL

Good afternoon OAIC,

I refer to the below notice of IC review, ref no. MR23/00623.

Please find attached a letter with attachments (A,B and C) in response to the review and request for documents.

Due to the size of Attachment C, it has been split into 4 parts with this email containing part 1 of 4.

Kind regards,

s22(1)(a)(ii)

Freedom of Information Section
Assurance, Integrity, Risk and Governance Branch
Finance, Governance, Budget and Business Services Division
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Department of Infrastructure, Transport, Regional Development, Communications and the Arts
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I recognise and respect their continuing connection to the land, waters and communities.
I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

OFFICIAL

From: OAIC - FOI DR <foidr@oaic.gov.au>
Sent: Friday, 21 July 2023 10:56 AM
To: FOI <FOI@infrastructure.gov.au>
Cc: s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@industry.gov.au](mailto:s22(1)(a)(ii)@industry.gov.au)>
Subject: MR23/00623 - Notice of IC review and request for documents [SEC=OFFICIAL]
Importance: High

Our reference: MR23/00623

s22(1)(a)(ii)

A/g Principal Legal Counsel
Department of Industry, Science and Resources

Dear s22(1)(a)(ii)

I refer to the attached notice of IC review addressed directly to the Minister for Communications on 29 June 2023. We had requested a response by 20 July 2023 but we have not received one, and it may have been appropriate for us to send this directly to the Department in the first instance.

I would be grateful if you could please confirm whether this notice was received by the Minister's office, and if so when a response is anticipated? Alternatively, could the Department please facilitate a response to this notice from the Minister's office if appropriate, or advise us of the most suitable contact in order that we can follow up with the Minister's office directly?

I would appreciate receiving an update at earliest convenience, or by **Monday 24 July 2023** if possible.

Many thanks for your assistance.

Kind regards



s22(1)(a)(ii)

Acting Director
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From: OAIC - FOI DR
Sent: Thursday, June 29, 2023 4:15 PM
To: Minister@communications.gov.au
Subject: MR23/00623 - Notice of IC review and request for documents

Our reference: MR23/00623
Agency reference: N/A

FOI Contact Officer
Minister for Communications

By email: Minister@communications.gov.au

Notice of IC review and request for documents

Dear FOI Contact Officer

Please find attached the notice of IC review and request for documents.

Please note, the Information Commissioner will share the submissions you provide during IC review with the applicant unless there are compelling reasons not to. However, we do not provide the applicant with copies of the documents at issue. Should you wish to provide submissions in confidence, please refer to the [IC Review Procedure Direction](#) which sets out the process for making such a request.

Kind regards

s22(1)(a)(ii)



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