



**Australian Government**

**Department of the Prime Minister and Cabinet**

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3-5 NATIONAL CIRCUIT  
CANBERRA, A.C.T. 2600

**FREEDOM OF INFORMATION ACT 1982**

**REQUEST BY:** Mr Lyall Lindsay Sempf

**DECISION BY:** Mr Alex Anderson  
Assistant Secretary  
Legal and Culture Branch

**The request**

In a letter dated 18 October 2004 to the FOI Contact Officer, Attorney-General's Department, Mr Sempf made a request under the *Freedom of Information Act 1982* (the FOI Act) seeking access as follows:

Specifically, I request the instrument that the Royal Styles and Titles Act (C'1th) 1973 looks to for its head of power under the Constitution for its valid creation by the Commonwealth Parliament or, a lawfully valid instrument outside those powers set out in Section 51 of the Constitution. This instrument is mandatory to establish that the "Queen of Australia" is lawfully qualified in the exercise of the executive power in the Commonwealth of Australia.

On 21 October 2004, the Department of the Prime Minister and Cabinet (the department) accepted transfer of the request under paragraph 16(1)(b) of the FOI Act.

**Decision**

I am authorised to make this decision under section 23 of the FOI Act.

**Searches for relevant documents**

I note that the department dealt with a request under the FOI Act in the same terms as Mr Sempf's request in February this year. At that time, the department undertook the following searches for the document sought:

- the department's Records Management Unit conducted a search of file titles for files which might be relevant to the request; and
- departmental officers searched the files.

No document within the terms of that request was located in these searches conducted at that time. I am satisfied that there is no real likelihood that any document within the terms of Mr Sempf's request would have come into the possession of the department since February 2004. I have therefore not caused any further searches to be undertaken.

## **Decision**

Section 24A 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 the 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.

I am satisfied that all reasonable steps have been taken to determine whether there are any documents in the possession of the department which would come within the terms of Mr Sempf's request. No such documents having been found, I am satisfied that no such documents exist in the department's possession. Accordingly, I must refuse Mr Sempf's request under section 24A of the FOI Act.

I do not consider that this decision under the FOI Act has any implications for the validity of the *Royal Style and Titles Act 1973* (the Act).

I note also that the FOI Act does not provide a right of access to a document which is, under the *Archives Act 1983*, within the open access period within the meaning of that Act, unless the document contains personal information (s.12(1)(a) of the FOI Act). Mr Sempf has sought access to the instrument that the Act "looks to" for its head of power. The Act received Royal Assent on 19 October 1973. I consider that, if any such document were to exist, it would have been in existence before the Act received Royal Assent and would now be in the open access period referred to above. Accordingly, if it did exist, such a document would not be one to which Mr Sempf would be entitled to seek access under the FOI Act.

## **Charges**

I have decided not to impose any charges for processing Mr Sempf's request.

## **Review and Complaints Rights**

I understand that Mr Sempf will be informed in an attachment to this decision about his rights of complaint and review.

*A. J. C. Anderson*

Alex Anderson  
Assistant Secretary  
Legal and Culture Branch

25 October 2004