

Ref: A5994819

4 April 2024

Mr Peter Mellander
28 Lidco Street
ARNDELL PARK NSW 2148

Email: pe [REDACTED]

Re: Notice of Decision – your GIPA application – Law Enforcement (Powers and Responsibilities) Act 2002

Dear Mr Mellander,

On 5 March 2024, we received your access application under the *Government Information (Public Access) Act 2009 (GIPA Act)* requesting access to:

“Specifically, I request from The Cabinet Office the instrument that the Law Enforcement (Powers and Responsibilities) Act 2002 looks to for its head of power under the Commonwealth Constitution for its valid creation by the Commonwealth Parliament or, a lawfully valid instrument outside those powers set out in Section 51 of the Commonwealth Constitution. This instrument is mandatory to establish the Law Enforcement (Powers and Responsibilities) Act 2002 is lawfully qualified in the exercise of the executive powers in the Commonwealth of Australia.”

Decision

I have today decided your application by:

- deciding that information is not held by the Department (section 58(1)(b) of the GIPA Act).

Statement of reasons

Searches conducted

Section 53(2) of the GIPA Act requires that agencies must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received.

Section 53(3) of the GIPA Act states that the obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically.

I note that:

- The Federal Government is responsible for the *Commonwealth of Australia Constitution Act (the Constitution)* and any amendments to it, and
- The Constitution remains in force and has not been rescinded or repealed.

However, searches for information relating to your application were undertaken by Legal Branch to ensure that no documents falling within the scope of your application exist.

Legal Branch undertook searches in Objective, the Department's document management system, using the following search terms:

- "Law Enforcement (Powers and Responsibilities) Act 2002" and "instrument" and "constitution"
- "Section 51 Constitution Act".

I am advised that no government information falling within the scope of your application has been identified.

I have therefore decided under section 58(1)(b) of the GIPA Act that the information sought is not held by the Department.

Further information

I note that the Constitution remains in force and is publicly available on the Federal Register of Legislation at: <https://www.legislation.gov.au/C2004Q00685/latest/text>.

I also note that a formal request for information relating to the Constitution may be made under the Commonwealth *Freedom of Information Act 1982 (FOI Act)* and directed to the Federal Attorney-General's Department.

Further information on how to make a formal request to the Federal Attorney-General's Department under the FOI Act is available to you at: [Freedom of information | Attorney-General's Department \(ag.gov.au\)](https://www.ag.gov.au/freedom-of-information).

Rights of review

This decision is reviewable under section 80(e) of the GIPA Act. If you are aggrieved by the decision that the information sought is not held, you may seek review under Part 5 of the GIPA Act.

There are three forms of review:

- internal review by a senior officer of the Department,
- external review by the Information Commissioner, or
- external review by the NSW Civil and Administrative Tribunal.

Your review rights are summarised in the enclosed fact sheet. You have four weeks from the date of this letter to apply for an internal review, and eight weeks to apply for an external review.

Fees and charges

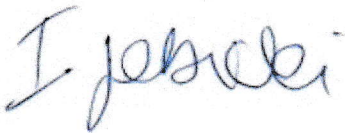
The GIPA Act entitles the Department to charge for the processing of an application, even in circumstances where a decision is made that the Department does not hold any information falling within the scope of the application.

Although 2 hours have been spent by the Department processing your application, I have decided that no further charges should be imposed for this application.

Inquiries

Please contact Sandra Scacciotti, Senior Project Officer, Information and Privacy Unit, on telephone (02) 9228 3168, or by email at: infoandprivacy@tco.nsw.gov.au, if you have any questions in relation to the application.

Sincerely

A handwritten signature in blue ink, appearing to read 'I. Gebicki'.

Isabelle Gebicki

Principal Legal Officer