



FOI reference: 23-054



FOI 23-054 NOTICE OF DECISION UNDER THE FREEDOM OF INFORMATION ACT 1982

I refer to your request to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) received on 21 October 2022 for access to documents under the *Freedom of Information Act 1982* (**the FOI Act**).

You requested the following:

- “1. Current version of the Board charter for the industry self-regulatory body .au Domain Administration Limited (auDA), which is currently Government endorsed.*
- 2. Full name and contact details of the Government representative in auDA’s nomination committee*
- 3. Current version or most recent previous version of policies, guidelines, directives, rules and procedures governing the following:*
 - a) the cyber and infrastructure security measures in the control of Australia’s country code Top-Level Domain – the .au domain*
 - b) the framework for the future review of the .au domain administration*
 - c) any intervention using the reserve powers under the Telecommunications Act 1997 and the Australian Communications and Media Authority Act 2005 in the event that auDA is unable to manage electronic addressing in an effective manner.*
- 4. Memoranda of understanding between the Department and the auDA for the disclosure and/or exchange of information*
- 5. Current terms of endorsement by the Commonwealth Government of the industry self – regulatory body .au Domain Administration Limited (auDA)*
- 6. Contract, deed of agreement or arrangement between the Commonwealth Government and auDA containing any term to give effect to the following provisions:*
 - a) Section 6C of the FOI Act; and/or*
 - b) Section 95 of the Privacy Act.”*

Authority

I am an officer authorised by the Secretary to make decisions about access to documents in the possession of the Department in accordance with subsection 23(1) of the FOI Act.

Decision

I have decided to:

- grant access to publicly available information located in relation to Parts 1, 2, 3a and 5 of your request; and

- refuse access to the remaining Parts of your request under section 24A of the FOI Act as the documents cannot be found or do not exist.

Part 2 of your request seeks access to the full name and contact details of the Department's representative on auDA's Nominations Committee. The Department's representative is Mr Lachlann Paterson, and his contact information is as follows:

Mr Lachlann Paterson

First Assistant Secretary

Communications Services & Consumer Division

Email: lachlann.paterson@infrastructure.gov.au

Tel: 02 6271 1372

As these contact details are able to be located online, I have not considered the release of this information when making my decision.

Part 1 of your request seeks access to the current auDA Board Charter, and Part 5 seeks access to the Commonwealth Government's current Terms of Endorsement of auDA. The current auDA Board Charter is an auDA owned document, and is publicly available on its website. The relevant document is able to be accessed via the following link:

[auDA Board Charter.pdf](#)

Similarly, the auDA Terms of Endorsement document is publicly available on our Department's website, and can be accessed via the following link:

[Terms of Endorsement for auDA - November 2021 | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#)

Part 3a of your request seeks access to the current or most recent versions of policies, guidelines, directives, rules and procedures governing the cyber and infrastructure security measures in the control of Australia's country code Top-Level Domain – the .au domain. The relevant officers within the Department have advised that the Government obliges auDA to maintain a secure and stable .au domain, however it does not normally dictate specific measures to accomplish this. auDA's security-related policy documents are located on its website, and are able to be located via the following links:

[auDA Enterprise Security Strategy - 2018](#)

[auDA - Website Security Vulnerability - Responsible Disclosure Policy](#)

[auDA - Data BReach Response Plan - 09/2019](#)

In addition, the Department of Home Affairs' webpage on Critical Infrastructure legislation covers auDA, and can be accessed via the link below:

[Engagement on critical infrastructure reforms \(homeaffairs.gov.au\)](#)

As the documents relating to Parts 1, 3a and 5 of your request are publicly available, I have not considered their release when making my decision.

Material considered

In making my decision, I had regard to:

- a. the terms of the request;
- b. relevant provisions in the FOI Act;
- c. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines);

- d. publicly available information identified to be relevant to the scope of your request; and
- e. information provided by officers within the Department who clarified that no documents were identified in regard to Parts 3(b-c), 4 and 6(a-b) of your request.

Reason for Decision

Refuse a request for access (section 24A)

Section 24A of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document cannot be found or does not exist.

The relevant line areas have conducted searches of the Department's document management systems and made enquiries with Department staff who could be expected to identify documents that fall within the scope of your request. These enquiries have revealed that the Department is not in possession of the requested documents relating to the industry self-regulatory body auDA, in regard to Parts 3(b-c), 4 and 6(a-b) of your request. I will address the reasoning for each of these Parts below.

Parts 3b and 3c of your request access to current policies, guidelines, directives, rules and procedures governing *b) the framework for the future review of the .au domain administration* and *c) any intervention using the reserve powers under the Telecommunications Act 1997 and the Australian Communications and Media Authority Act 2005 in the event that auDA is unable to manage electronic addressing in an effective manner*. The relevant officers within the Department have advised that no framework regarding a future review of auDA has yet been created, and since the legislative powers cited by yourself have never been exercised, no written documentation about an intervention exists.

In relation to Part 4 of your request, the relevant line area has advised that while the Terms of Endorsement encourages auDA to work cooperatively with Government agencies, there is no evidence that a written agreement between the Department and auDA regarding the disclosure or exchange of information exists.

Part 6 of your request seeks access to a contract or written deed of agreement between auDA and the Department, however auDA is not a contracted agency, rather it is an independent not-for-profit industry body which is not subject to Section 6C of the FOI Act. For this reason, no deed of agreement or other arrangement exists. Similarly, auDA does not engage in medical research, and is therefore not subject to Section 95 of the Privacy Act.

I am satisfied that all reasonable steps have been taken to locate the documents you have requested and that the documents cannot be found or do not exist. I have, therefore, decided to refuse access to your request, in accordance with section 24A(1)(b)(ii) of the FOI Act.

Additional Information

Should you have any questions concerning this decision, please do not hesitate to contact the FOI Team on FOI@infrastructure.gov.au.

Yours sincerely



Kath Sillari
Assistant Secretary
Consumer Safeguards Branch
Communications Services & Consumer Division

10 November 2022