



27 September 2021



Notice of Decision on Freedom of Information (FOI) Request - [REDACTED]  
[REDACTED] - Patent data.

Dear [REDACTED]

I am writing to advise you of my decision on your request dated **14 September 2021**.

#### Authority to make decision

I am an authorised decision-maker under section 23 of the *Freedom of Information Act 1982* (Cth) (the FOI Act). My name and designation appear at the end of this letter.

#### No charges payable

I have decided not to impose any charges for the work involved in processing your request, in accordance with the FOI Act and the *Freedom of Information (Charges) Regulations 1982* (Cth).

#### Relevant documents

1. Regarding the IP Government Open (IPGOD) Database, documents pertaining to information on patent examiners linked to each application
2. Register of active patent practitioners
3. Documents pertaining to data on the number of forward citations that each patent received.

I have contacted our data analytics team who have confirmed that information on patent examiners linked to each application may be generated. They have also confirmed that we do not maintain a register of patent practitioners/attorneys (though this may be accessed through [this link](#)) and that we do not undertake citation mapping where a specific Australian patent application is cited as prior art by another patent. Hence, this information is not available in a discreet document form, nor is such a document able to be generated by us. However, you may be able to get this information from a commercial provider for a fee.

#### Summary

After considering your request, I have decided that the request for [1] (information pertaining to the IPGOD Database) is to be refused in full in accordance with s 47F of the FOI Act. I have also decided that your request for [2] (patent examiner register) and [3] (forward citation data) is to be denied under s 24A of the FOI Act.

#### Decision – (1) [IPGOD Database]

While it is possible to generate this document containing the information requested, I have decided that providing such a document would be an unreasonable disclosure of personal information of IP Australia employees that is not outweighed by the public interest in disclosing this information (pursuant to s 47F of the FOI Act).

### Material taken into account

In making my decision I have considered the following material:

- your FOI application;
- the document(s) within the scope of your request;
- the FOI Act;
- guidelines released by the Office of the Australian Information Commissioner (**OAIC**) issued under section 93A of the FOI Act (**Guidelines**);
- relevant cases and decisions by the OAIC, including Information Commissioner review decisions.

### Reasons for decision

#### *Personal information - section 47F*

A document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

I am satisfied that information contained in the document constitutes 'personal information' (as defined in section 4(1) of the FOI Act and section 6 of the *Privacy Act 1988* (Cth)).

In determining whether the disclosure of information would involve the unreasonable disclosure of personal information, I have taken into account the following matters (in accordance with section 47F(2) of the FOI Act):

- the extent to which the information is well known;
- whether the person to whom the information relates is known to be (or has been) associated with the matters dealt with in the document;
- the availability of the information from publicly accessible sources; and
- any other relevant matters.

Against these criteria, I have found that:

- the specific personal information contained in the document is not well known to the general community;
- the people to whom the information relates are not publicly known to be associated with the matters dealt with in the document;
- the material considered to be exempt is information that the individuals would reasonably expect not to be disclosed to a third party without their consent;
- the material considered to be exempt is information, which, if disclosed, could be used to identify those individuals; and
- the information is not readily available from publicly available sources.

Accordingly, I am satisfied that this material is conditionally exempt under section 47F of the FOI Act. Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act).

#### *The public interest - section 11A of the FOI Act*

An agency is obliged to provide access to a conditionally exempt documents unless access to the documents at that time would, on balance, be contrary to the public interest. Whilst I have decided that some of the information contained in the document is conditionally exempt under section 47F and 47G of the FOI Act, I am now obliged to consider whether disclosure of that information would be contrary to the public interest.

I have considered the factors favouring access provided by section 11B(3) of the FOI Act, and I have not taken into account the irrelevant factors in section 11B(4).

In balancing the public interest in this case, I have given particular weight to the following factors in favour of disclosure:

- promoting the objects of the FOI Act, including transparency and public participation in government processes; and
- providing access to government-held information.

I have also considered the following factors against disclosure (as outlined at paragraph 6.22 of the Guidelines):

- preserving reasonably held expectations of confidentiality having regard to the sensitivity of the information and the circumstances in which the information was communicated to IP Australia;
- ensuring that persons continue to actively volunteer relevant information to IP Australia; and
- whether disclosure could reasonably be expected to harm the interests of an individual or group of individuals.

I have placed considerable weight on promoting the objects of the FOI Act. I have balanced this against the need to protect and preserve business information given to IP Australia.

I have decided that the public interest factors in favour of disclosure do not outweigh the factors against disclosure. Disclosure would not inform public debate on any matter of public importance or promote the effective oversight of public expenditure. Rather, disclosure could reasonably be expected to prejudice the protection of an individual's privacy including enabling identity fraud. I consider that these factors outweigh any public interest there may be in the release of this information.

Accordingly, I am satisfied that the sensitive personal information is exempt under section 47F of the FOI Act and that disclosure would be contrary to the public interest.

### **Decision – (2) [Register of Active Practitioners] and (3) [Forward Citations]**

Requests may be refused if reasonable steps have been taken to find the documents and documents cannot be found or do not exist (as per s 24A of the FOI Act). I am writing to advise that all reasonable steps have been taken by IP Australia to identify and locate the documents to which you seek access. On this basis, I am satisfied that the documents you have requested do not exist. Consequently, I am formally refusing your request for access under section 24A of the FOI Act.

The Guidelines relevantly state, at paragraph 3.54, that:

*What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's environment. At a minimum, an agency or minister should take comprehensive steps to locate a document having regard to:*

- *the subject matter of the documents;*
- *the current and past file management systems and the practice of destruction or removal of documents;*
- *the record management systems in place;*

- *the individuals within the agency who may be able to assist with the location of documents; and*
- *the age of documents.*

IP Australia undertook searches for documents falling within the scope of your request.

Searches were undertaken by individuals within the agency in the areas most relevant to the request. IP Australia used the relevant time periods to conduct searches for the information specified in your requests and it has been determined that these documents do not exist.

### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Under section 54 of the FOI Act, you may apply in writing to IP Australia for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter (section 54B of the FOI Act).

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

### 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 of the date of this letter, and be lodged in one of the following ways:

online:

[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/FOI Complaints](https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/FOI%20Complaints)

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. Complaints can be lodged in one of the following ways:

online:

[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA\\_1](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1)

email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

post: GPO Box 5218 Sydney 2001

More information about complaints is available on the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

If you are not sure whether to lodge an Information Commissioner review or an Information Commissioner complaint, the Office of the Australian Information Commissioner has more information at: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

#### **Contact**

If you have any questions regarding this notice, please do not hesitate to contact me in writing by email at [FOI@ipaustralia.gov.au](mailto:FOI@ipaustralia.gov.au).

Yours sincerely



FOI Officer

Office of Legal Counsel