



21 July 2023

Our reference: LEX 74299

Mr Arthur Jordan (Right to Know)

Only by email: foi+request-10347-cdb6e3fe@righttoknow.org.au

Dear Mr Jordan,

Freedom of Information Request - Internal Review Decision

I refer to your request for internal review of the Freedom of Information (FOI) decision made by an authorised decision maker of Services Australia (the Agency) under the *Freedom of Information Act 1982* (FOI Act) on 26 June 2023 (LEX 73800) (the original decision).

Background

On 27 May 2023, you made a request under the FOI Act for the following documents:

A recent response from the Dept. of Veterans Affairs stated that all documents used by them are held by Services Australia on their computer Servers (not DVA Servers), in particular documents (both inward and outward facing documents) described by DVA as the Consolidated Library of Information and Knowledge, or CLIK. I seek a list under S.17 of the FOI Act indicating the names and details of all documents held by Services Australia on their Servers, on behalf of and accessed by the Department of Veterans Affairs. I do not require a copy of any documents, just the list.

On 26 June 2023, an Authorised FOI Decision Maker of the Agency decided to refuse your request for access under section 24A of the FOI Act on the basis that all reasonable steps had been taken to locate the documents you requested and they were satisfied that the documents did not exist.

The original decision also stated that the Authorised FOI Decision Maker was satisfied that section 17 of the FOI Act does not apply to your request as the Agency does not hold the information you have requested, as it belongs to DVA.

On 26 June 2023, you requested an internal review of the original decision. You made the following submission in support of your request for internal review:

I am writing to request an internal review of Services Australia's handling of my FOI request 'List of all documents held on behalf of Dept. of Veterans Affairs.'

You state your refusal reason as "Your request indicates you have been provided advice that DVA documents are stored on the Agency's computer servers. I am

advised the Agency has a shared ICT platform with other government departments and agencies such as DVA. However, documents owned by other departments that may be stored on this server are not within the Agency's possession. Therefore, the Agency does not hold possession of the documents (should they exist) nor a list with the the names and details of any such documents"

This is a very pedantic meaning of "possession" and one which I do not agree with. It is your duty to do more to comply with this FOI request than just say that because you share Server space with other Government Departments you do not have possession of them, you can't find them. DVA says the same thing, that because the documents are on your Servers, they do not have possession of them.

Please explain who has the ultimate access to all shared documents on your Servers? This would be of more benefit than to just refuse my FOI request outright.

Summary of my internal review decision

I am authorised to make decisions under section 23(1) of the FOI Act, including internal review decisions under section 54C of the FOI Act.

Consistent with the requirements of section 54C(2) of the FOI Act, I have made a fresh decision.

I have decided to refuse your request on the basis that all reasonable steps have been taken to locate the documents you requested and I am satisfied that they cannot be located, pursuant to section 24A of the FOI Act.

I am also satisfied that section 17 of the FOI Act does not apply to your request as the Agency cannot determine whether documents have been accessed by DVA, therefore, the Agency is unable to produce a written document containing the information you have requested in discrete form by use of a computer or other equipment that is ordinarily available to the Agency.

Please refer to **Attachment A** for further information regarding the reasons for my decision.

You can ask for a review of our decision

If you disagree with any part of the decision, you can ask for a review by the Australian Information Commissioner. See Attachment B for more information about how to request a review.

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Further assistance

If you have any questions please email FOI.LEGAL.TEAM@servicesaustralia.gov.au

Yours sincerely

Zeng
Authorised FOI Decision Maker
Freedom of Information Team
FOI and Ombudsman Branch | Legal Services Division
Services Australia



Attachment A

REASONS FOR DECISION

On 27 May 2023, you made a request under the FOI Act for the following documents:

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Please explain who has the ultimate access to all shared documents on your Servers? This would be of more benefit than to just refuse my FOI request outright.

What I took into account

In reaching my decision I took into account:

- your original request dated 27 May 2023
- the original decision dated 26 June 2023
- your request for internal review dated 26 June 2023

- consultations with Agency officers about:
 - the nature of the documents
 - the Agency's operating environment and functions
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**), and
- the FOI Act.

Reasons for my decisions

I am authorised to make decisions under section 23(1) of the FOI Act.

Section 24A of the FOI Act

Section 24A of the FOI Act provides that:

- (1) 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 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.

The Agency provides a range of information and communications technology (ICT) services to Commonwealth agencies which includes DVA. Whilst the Agency may provide these ICT services, I am advised that the Agency is not able to determine whether a particular document has been accessed by another Commonwealth agency, including DVA.

Accordingly, I am satisfied that in accordance with section 24A of the FOI Act:

1. all reasonable steps have been taken to find the documents; and
2. the documents cannot be located.

Section 17 of the FOI Act

Where a document does not currently exist but an agency could create a document which contains the information sought using a computer that is ordinarily available to it for retrieving or collating stored information, section 17 of the FOI Act requires the agency to treat the FOI request as if the document does exist.

In circumstances where the Agency is unable to determine whether documents have been accessed by DVA, I am satisfied that section 17 of the FOI Act does not apply to your request as the Agency is unable to produce a written document containing the information you have requested in discrete form by use of a computer or other equipment that is ordinarily available to the Agency (as required under section 17(c)).

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information decision

Before you ask for a formal review of a FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

Asking for a formal review of an Freedom of Information internal review decision

If you still believe a decision is incorrect, the FOI Act gives you the right to apply for an external review of the internal review decision. Under section 54M of the FOI Act, you can apply for a review of an FOI decision by the Australian Information Commissioner. There are no fees for this review.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- If you have one, you should include with your application a copy of the Services Australia decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the Agency's decision.

Complaints to the Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act, There is no fee for making a complaint. A complaint to the Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Commonwealth Ombudsman may be made in person, by telephone or in writing. The Commonwealth Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.