



Our ref: FOI 2023-24

Trent Morrison-Francis

By email: foi+request-10818-a9e8aa0f@righttoknow.org.au

Dear Mr Morrison-Francis,

FREEDOM OF INFORMATION REQUEST

I refer to your request dated 31 October 2023, made under the *Freedom of Information Act 1982* (the **FOI Act**) and received by the Commonwealth Superannuation Corporation (**CSC**) via the right to know website.

My decision has been attached as **Annexure A** and your appeal rights can be found at **Annexure B**.

Yours sincerely,

Linda Glover
Manager,
General Counsel Team
Commonwealth Superannuation Corporation
4 December 2023



Commonwealth
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Corporation

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STATEMENT OF REASONS - TRENT MORRISON-FRANCIS

I, Linda Glover, Manager Dispute Resolution & Casework, am an officer authorised under section 23 of the FOI Act to make decisions in relation to the Commonwealth Superannuation Corporation (**CSC**).

What follows is my decision and reasons for the decision in relation to your request.

BACKGROUND

On 31 October 2023, CSC received your request via the right to know website, in the following terms:

I, Trent Morrison-Francis, am requesting access to documents under the Freedom of Information Act 1982. Specifically, I am seeking:

All active Memorandum of Understanding, Heads of Agreement, Data Sharing Agreements, and Service Contracts that result in the sharing of veteran data, even if de-identified. I am looking for similar documents for programs and agreements that ceased within the last 10 years or are still active.

I prefer to receive these documents electronically via the Right to Know system by responding to the email through which this request has been sent.

On 8 November 2023, CSC wrote to you, via the right to know website, to clarify the scope of your request as follows:

Request Consultation Process

To enable CSC to consider your request for access under the FOI Act, we will require sufficient information concerning the specific existing documents you are seeking access to, so as to enable the CSC to identify those documents. You now have an opportunity to revise your request to enable it to proceed. To assist with searches, please the clarify following terms:

- *Define 'Similar Documents': Explain what criteria or characteristics make a document 'similar' to the ones you've mentioned (Memorandum of Understanding, Heads of Agreement, Data Sharing Agreements, and Service Contracts).*
- *Detail the scope of 'Data Sharing': Describe in more detail what you mean by 'data sharing'. Specify the types of data, the parties involved, and the nature of the data sharing agreements.*
- *Clarify the Term 'Veteran Data': Define what you mean by 'veteran data' to avoid any uncertainty. Specify the types of data related to veterans that you are interested in.*

Your request is currently not a valid request for the purposes of section 15(2)(b) of the FOI Act. As part of this practical refusal consultation, you have 14 days to do one of the following:

- *withdraw your request;*
- *make a revised request;*
- *indicate that you do not wish to revise your request.*

If you do not do one of the three things listed above during the consultation period (14 days) or you do not consult the contact person listed below during this period, we will take no further action with your request.

To date, no response to our request dated 8 November 2023 has been received from you, and as a result we have been unable to identify specific documents relevant to your request.

SEARCHES

Searches for documents were undertaken by relevant CSC business areas, with responsibility for matters relating to the documents to which you sought access including the General Counsel Team.

EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

In reaching my decision, I have relied on the following:

- the scope of your request dated 31 October 2023;
- advice from CSC business areas with responsibility for matters contained in the documents;
- the FOI Act; and
- the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

DECISION

I have decided to refuse your request under subsection 24A(1) of the FOI Act, on the grounds that CSC has taken all reasonable steps to locate the documents you have request, and without proper clarification, we have determined that those documents do not exist.

My reasons for this decision are set out below.

REASONS FOR DECISION

My findings of fact and reasons for decision that certain information is irrelevant is set out below.

Subsection 24A(1) of the FOI Act provides that:

- An agency of Minister may refuse a request for access to a document if:*
- all reasonable steps have been taken to find the document; and*
 - the agency or Minister is satisfied that the document;*
 - is in the agency's or Minister's possession but cannot be found; or*
 - does not exist.*

In determining what the FOI Act means with respect to 'all reasonable steps', I have had regard to the FOI Guidelines which discuss the meaning of 'reasonable' in paragraph 24A(1)(a). It is not designed to go beyond the limit assigned by reason, not to be extravagant or excessive, rather to be moderate and of such an effort to be appropriate or suitable in the circumstances.¹

Preliminary searches and inquiries were undertaken by the CSC General Counsel Team. However, because you did not respond to our request for clarification, we were unable to identify specific documents relevant to your request.

I am satisfied that the measures taken by CSC staff in response to your request under the FOI Act, as outlined above, are appropriate and suitable given the circumstances. After taking all reasonable steps to find the documents, no documents relevant to your request have been identified.

¹ 3.88 of the FOI Guidelines.

Accordingly, I am refusing your request for access under subsection 24A(1) of the FOI Act as documents do not exist.

While we have been unable to locate any documents relevant to your request, we would like to acknowledge that information sharing capabilities exist between CSC and the Department of Veterans' Affairs (**DVA**) by way of legislation, including the *Military Rehabilitation and Compensation Act 2004* (**MRCA**) and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (**DRCA**).

REVIEW AND COMPLAINT RIGHTS

If you are unsatisfied with my decision, information about how you can make an internal review request or complaint about the handling of your request, is set out below.

Review

You may request for an internal review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by:

- (a) an internal review officer in CSC; or
- (b) the Australian Information Commissioner.

Internal review

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- made in writing;
- made within 30 days of receiving this letter; and
- sent to FOI@csc.gov.au.

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

Information Commissioner review

If you want to seek direct review by the Information Commissioner (and not internal review), you must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au Post: GPO Box 2999, Canberra ACT 2601 Fax: +61 2 9284 9666 Email: enquiries@oaic.gov.au	In person: Level 3, 175 Pitt Street, Sydney NSW 2000
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An application form is available on the website at www.oaic.gov.au.

Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Complaint

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better.

Complaints to the Commonwealth Ombudsman

You may complain to the 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 Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek, and receive a decision on, review before complaining about a decision.

Complaints to the Information Commissioner

You may also complain to the 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 Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Phone: 1300 363 992

Website: www.oaic.gov.au