



Mr Paul Swain  
C/- Right to Know website

**By email only to:**

foi+request-11014-0cb2ba29@righttoknow.org.au

**Our reference:** 1-113WRJL2  
**Contact Officer:** FOI@ato.gov.au  
**Date:** 21 March 2024

## Decision regarding your Freedom of Information internal review request

Dear Mr Swain,

The purpose of this letter is to advise you of my decision following your request for internal review of the decision made under the *Freedom of Information Act 1982* (FOI Act) on 9 February 2024 (our reference 1-10RB1BY5).

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests, including internal reviews.

### Decision

I have decided to affirm the initial decision for reasons stated further below.

I have also provided further information on how we may better assist you outside the FOI process.

### Background

On 10 January 2024, you requested access to documents relating to how Pay as you go (PAYG) instalments are calculated. Specifically, you sought access to:

*“... any documents that you hold that:*

- 1. explain why gross income (rather than income net of deductible expenses) is used when calculating PAYG instalments - see <https://www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/payg-instalments/calculate-your-payg-instalments/instalment-income>*
- 2. explain why this doesn't lead to the ATO collecting more tax during the year that then needs to be refunded once the taxpayer completes their tax return (which will be based on income net of deductible expenses).”*

You were advised on 9 February 2024 of the decision to refuse access under subparagraph 24A(1)(b)(ii) of the FOI Act as no documents exist, and that the information sought is publicly held in taxation legislation.

You asked for an internal review of that decision on 20 February 2024 and provided further information as to why you think there are documents that would fall within the scope of your request, including:

- correspondence from the ATO that you received in relation to your personal tax matter; and

- a phone conversation you had with an ATO officer earlier this year.

### **Material taken into account**

I have taken the following material into account in making my decision:

- the terms of your initial request and your internal review request;
- the content of the documents that fall within the scope of your request;
- the FOI Act (specifically sections 24A);
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act; and
- consultation with the relevant business area in the ATO, namely Individuals and Intermediaries (IAI).

### **Reasons for decision**

I have consulted with the relevant business area and they have confirmed that the information you have sought is publicly available in legislation and no documents exist within the ATO to satisfy your request. I am therefore affirming the initial decision and I refer you to the original decision maker's reasoning.

To further assist you and in consultation with the relevant business area, the original decision maker provided you with an explanation to your specific tax questions and included it in her decision letter, which I would also again direct you to.

### **Further assistance from the ATO outside the FOI process**

To better assist you in respect of your individual tax affairs, I recommend you contact the ATO directly (not through a public website) and outside the FOI process. There are two options to do this.

#### Option 1

Call 13 28 61 and an ATO officer will be able to assist you. The ATO takes taxpayer confidentiality seriously, and we need to know we are talking to the right person; therefore you will be asked to provide identifying information.

The ATO officer should then be able to review your tax account and advise you accordingly on your PAYGI calculations.

#### Option 2

Alternatively, you are welcome to contact the ATO FOI mailbox from your personal email address and provide your TFN, so we can put you in touch with an ATO officer from the relevant business area to discuss your personal tax affairs.

As you have contacted us via the Right to Know platform, which is a public forum, we are unable to discuss your personal tax affairs. The strict taxpayer confidentiality provisions in Schedule to the *Taxation Administration Act 1953* prohibit any ATO officer from discussing a taxpayer's tax affairs, even with consent from the taxpayer, in a public forum.

### **Your review rights**

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. 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

Visit the OAIC website, <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>, for more information about Australian Information Commissioner review.

### **Complaints**

Any complaint about the processing of your FOI request can be forwarded to the OAIC. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

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 NSW 2001

The Information Commissioner can be contacted on 1300 363 992.

Yours sincerely

**Berlina**  
**Principal Lawyer**  
Office of General Counsel  
Australian Taxation Office