



Australian Government
Department of Social Services

By email: foi+request-1313-c3d691ea@righttoknow.org.au

Dear Dr Lloyd

Freedom of Information Request No. 15/16-051

1. I refer to your correspondence received by the Department of Social Services (**the Department**) on 14 October 2015, in which you requested access under the *Freedom of Information Act 1982* (**the FOI Act**) to documents relating to the consultation process of the Reference Group on Welfare Reform.
2. Specifically, you wished to seek access to:
 - "1. Transcripts of initial stakeholder consultations conducted in late 2013 and early 2014;*
 - 2. Copies of the 231 online comments made in response to the Reference Group's Interim Report;*
 - 3. Transcripts of 'stakeholder roundtables' conducted in July and August 2014; [and]*
 - 4. Transcripts of 'individual customer roundtables' conducted with income support payment customers during August 2014".*
3. I am authorised to make decisions under the FOI Act and my decision regarding your request and the reasons for my decision are set out below.

DECISION ON ACCESS

4. As an authorised decision maker pursuant to subsection 23(1) of the FOI Act, I have decided to refuse your request under subsection 24(1) of the FOI Act because I am satisfied that a practical refusal reason still exists under section 24AA of the FOI Act.
5. The practical refusal reason is that the work involved in processing your revised request would substantially and unreasonably divert the resources of the Department from its other operations.
6. In reaching my decision I have had regard to the following:
 - your correspondence dated 14 October 2015 setting out your request;
 - the notice issued by the Department under section 24AB of the FOI Act on 2 November 2015;
 - your request for clarification in the email dated 2 November 2015 and the Department's response to you dated 4 November 2015;
 - your correspondence dated 10 November 2015, revising the scope of your request;
 - documents falling within the scope of your request;
 - consultation undertaken with departmental officers regarding the number and nature of documents falling within scope of your request;
 - factors relevant to assessing the time and resources involved in processing your request;

- factors relevant to the assessment of whether processing your request would involve a substantial and unreasonable diversion of the Department's resources;
- relevant provisions set out under the FOI Act, and in particular section 24 and section 24AA;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

BACKGROUND

7. On 14 October 2015, the Department received your correspondence seeking access to the material set out above at paragraph 1 of this decision.
8. As an initial step in considering your request of 14 October 2015 (**original request**), the Information Team liaised directly with departmental officers in the Eligibility and Participation Policy Branch who confirmed that there is no material held by the Department which is relevant to parts 1, 3 or 4 of your request because no 'transcripts' were created by the Department for the stakeholder consultations conducted in mid-2014, and the individual customer roundtables mentioned in part 4 of your original request were conducted by the Department of Human Services (as noted in the Department's correspondence to you dated 2 November 2015).
9. However, the Department identified all 231 online comments made by individuals in response to the Reference Group's Interim Report, and the Information Team then conservatively estimated that it would take at least 133 hours to process part 2 of your original request (as confirmed in correspondence to you dated 4 November 2015), based on the number and nature of relevant documents held by the Department.
10. Accordingly, in my correspondence to you dated 2 November 2015, I wrote to advise you of the Department's intention to refuse access to the documents requested because the work involved in processing your request would substantially and unreasonably divert the resources of the Department from its other operations, and a request consultation process was initiated under section 24AB of the FOI Act. To remove the practical refusal reason, I suggested that you may wish to reduce the scope of your request to a lesser number of online comments.
11. On 10 November 2015, you wrote to the Department to confirm that you wished to revise the scope of your request to only seek access to:

"...a random sample of 50 online comments..." (**revised request**).
12. The Information Team then considered the effect that the revision would have on the work involved in processing your request, and whether the practical refusal reason was removed.

REASONS FOR DECISION

Section 24 of the FOI Act – Power to refuse request – diversion of resources

13. Subsection 24(1) of the FOI Act relevantly provides as follows:

If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:

(a) must undertake a request consultation process (see section 24AB); and

- (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists – the agency or Minister may refuse to give access to the document in accordance with the request.*

Section 24AA of the FOI Act – When does a *practical refusal reason* exist?

14. Subsection 24AA(1) also relevantly provides that:

For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:

- (a) the work involved in processing the request:*

- (i) in the case of an agency – would substantially and unreasonably divert the resources of the agency from its other operations; or*
- (ii) in the case of a Minister – would substantially and unreasonably interfere with the performance of the Minister's functions;*

- (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).*

Substantial diversion of resources

15. As a preliminary step in determining whether your revised request removed the practical refusal reason, the Information Team entered relevant details into a charges calculator provided by the Australian Government Solicitor (**AGS**) to obtain a quantitative estimate of how long it would take the Department to process your revised request.
16. The AGS charge calculator estimated that it would take approximately 107 hours to process your request, 100 hours of which would be consumed by the need for the Department to undertake third party consultations with each of the 50 individual respondents whose comments would be randomly sampled (based on 2 hours of consultation time per respondent), before the Department could make a decision on access.
17. I have applied my own experience in processing requests of a similar nature to carefully evaluate the estimate and, in my opinion, it is a reasonable yet conservative assessment of the time required to process your request, taking into account that more than 7 hours of decision making time is likely to be required in order to draft a statement of reasons (and a document schedule covering each of the 50 documents). This is due to the fact that, while some of the online comments may require minimal consideration, there are other comments containing more sensitive/personal material which will require additional decision making time, including the additional time that may be required to consider any objections made during third party consultations.
18. Having applied my own judgement to the calculation I am satisfied that 107 hours is a fair and reasonable reflection of the time required to process your revised request in accordance with the FOI Act, meaning that it would take more than 15 days for an officer with FOI experience to complete the request (based on a 7 hour full time working day).
19. In my view, this is a significant impost on the Department and would result in an officer being diverted from their usual duties to focus solely on processing your request. Accordingly, I am

satisfied that this would substantially divert the resources of the Department from its other operations.

The diversion would be unreasonable

20. In addition to being a substantial diversion of the Department's resources, I am also satisfied that processing your revised request would unreasonably divert departmental resources.
21. The Department's Information Team is a small team that is responsible for processing all FOI requests received by the Department, including requests from individuals seeking access to documents containing their own personal information and requests made by other interested parties seeking access to other material.
22. It is important that other FOI requests made to the Department continue to be processed in a timely manner in accordance with the statutory requirements set out under the FOI Act, and processing your revised request would impede the Department's ability to process other requests within statutory timeframes, thereby disadvantaging those applicants.
23. I also note the compelling public interest in the Department being able to continue to provide other legal and administrative functions to ensure the proper administration of the ordinary business of government. If the Information Team were to process your revised request, this would hinder the Department's ability to perform some of these functions to the appropriate standard.
24. Accordingly, I consider that the work required to process your request would substantially and unreasonably divert the resources of the Department from its other operations. As I am satisfied that a practical refusal reason still exists in relation to your request, I have decided to refuse it on that basis under subsection 24(1) of the FOI Act.

Rights of review

25. I have set out your rights to seek a review of my decision at **Attachment A**.
26. Should you have any enquiries concerning this matter, please do not hesitate to contact me via email at foi@dss.gov.au

Yours sincerely



Alexandra Brown
Senior Legal Officer
Commercial, Housing, Disability and Information Law Branch
Legal Services Group

20 November 2015

Your rights of review

Internal review

Section 54 of the FOI Act gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular format is required but it will help the new decision maker if you state clearly why you consider the decision should be reviewed. Please send your application by post or email as follows:

Post: Commercial, Housing, Disability and Information Law Branch, TOP AE3
Legal Services Group
Department of Social Services
PO Box 7576
Canberra Business Centre ACT 2610

Email: foi@dss.gov.au

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

Applications for review or complaint can be lodged in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218 Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street
Sydney, NSW 2000

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.

The Commonwealth Ombudsman

You can 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.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. The Ombudsman may be contacted for the cost of a local call from anywhere in Australia on telephone 1300 362 072.