



Australian Government
Department of Social Services

Ms Rachel Adler

By email: foi+request-1646-83b3b6e5@righttoknow.org.au

Dear Ms Adler

Freedom of Information (FOI) Request No. 15/16-110

1. I refer to your correspondence received on 26 February 2016 by the Office of the Minister for Social Services, the Hon Christian Porter MP, and transferred to the Department of Social Services (**the Department**) on 29 February 2016, in which you seek access under the *Freedom of Information Act 1982* (FOI Act) to documents in respect of the following:

"What documents and reports do you have to support the changes recommended in the 2009 report that the National Centre for Social and Economic Modelling (NATSEM) prepared for the Department of Families, Housing, Community Services and Indigenous Affairs? What steps have been made to enforce the Workplace Gender Equality Act 2012, which is based on that report, to ensure that gender pay inequality is being eradicated?"

2. I am authorised to make decisions under subsection 23(1) of the FOI Act. The following is my decision and the reasons for the decision.

Decision on access to documents

3. Pursuant to subparagraph 24A(1)(b)(ii) of the FOI Act, I have decided to refuse your request for access to the documents on the basis that the documents you are requesting do not exist (i.e. are not in the possession of the Department).

Reasons for decision

4. An agency or Minister may refuse a request for access to a document under subsection 24A(1) of the FOI Act 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.*

5. I have decided to refuse your request pursuant to section 24A of the FOI Act on the basis that the Department has taken all reasonable steps to find the documents falling within the scope of your request, and I am satisfied that the documents do not exist.

6. The evidence on which I have based my decision is:

- your correspondence dated 26 February 2016 outlining the particulars of your request for documents under the FOI Act;
 - consultations with departmental officers as to the information held by the Department and searches for documents undertaken by them;
 - consultations with officers of the Department of the Prime Minister and Cabinet (PM&C) and the Department of Employment;
 - the FOI Act; and
 - the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.
7. I am advised by departmental officers in the Legal Services Group that thorough searches have not located any document which falls within the scope of your request as set out at paragraph 1 of this decision.
8. The NATSEM report you refer to – ‘*The Impact of a Sustained Gender Wage Gap on the Australian Economy*’, published in March 2010 – was prepared for and funded by the Office for Women, which at that time was part of the Families, Housing, Community Services and Indigenous Affairs portfolio (which has become the Social Services portfolio) – see <http://www.natsem.canberra.edu.au/publications/?publication=the-impact-of-a-sustained-gender-wage-gap-on-the-australian-economy-1>.
9. The Office for Women, however, is now part of the portfolio responsibilities of PM&C. I attempted to transfer your request to PM&C, which has also conducted reasonable searches for documents within scope of your request. Officers of PM&C have advised me that policy responsibility for workplace gender equality and the administration of the *Workplace Gender Equality Act 2012 (the Act)* is now held by the Department of Employment.
10. I have also consulted with officers of the Department of Employment, who advised me that, should you wish to make a fresh request directly to that agency you may do so by sending an application to foi@employment.gov.au, however, as your request is currently worded in very broad terms, you may wish to first contact the Department of Employment, by telephone on (02) 6240 7310, to discuss how you may frame your request to best identify relevant documents.
11. As you may also know, the Act created the Workplace Gender Equality Agency (WGEA) to promote and improve gender equality in Australian workplaces. The WGEA’s wide range of functions includes:
- advising and assisting employers in promoting and improving gender equality in the workplace;
 - developing, in consultation with relevant employers and employee organisations, benchmarks in relation to gender equality indicators;
 - issuing guidelines to assist relevant employers to achieve the purposes of the Act;
 - reviewing compliance with the Act by relevant employers, reviewing public reports lodged by relevant employers and dealing with those reports in accordance with the Act;
 - collecting and analysing information provided by relevant employers under the Act to assist the WGEA to advise the Minister for Employment in relation to legislative instruments made under the Act;
 - undertaking research, educational programs and other programs for the purpose of promoting and improving gender equality in the workplace;
 - working with employers to maximise the effectiveness of the administration of the Act, including by minimising the regulatory burden on employers;
 - promoting and contributing to the understanding and acceptance, and public discussion, of gender equality in the workplace;

- reviewing the effectiveness of the Act in achieving its purposes; and
- reporting to the Minister on such matters in relation to gender equality in the workplace as the WGEA thinks fit.

12. The WGEA's website - www.wgea.gov.au - contains further publicly available information on the progress the Australian Government is making towards eradicating workplace gender inequality, which you may find useful. For general information enquiries, the WGEA may also be contacted on 1800730 233 or at wgea@wgea.gov.au.

13. Accordingly, I am satisfied that all reasonable steps have been taken to determine whether the relevant documents exist (i.e. are held by the Department) and such steps have failed to locate any document falling within the scope of your request. I have therefore decided to refuse your request pursuant to subparagraph 24A(1)(b)(ii) of the FOI Act on the basis that the documents you are seeking do not exist.

Rights of review

14. I have enclosed information about your rights of review at **Attachment A**.

15. Should you have any enquiries concerning this matter, please do not hesitate to contact me via email at foi@dss.gov.au

Yours sincerely



Clare McLean
Principal Legal Officer and FOI Coordinator
Commercial, Disability, Housing and Information Law Branch
Legal Services Group

11 March 2016

ATTACHMENT A**Internal review**

Section 54 of the *Freedom of Information Act 1982* (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 form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Post: Freedom of Information (FOI) Coordinator
Commercial, Disability, Housing and Information Law Branch, TOP AW2
Department of Social Services
GPO Box 9820
Canberra ACT 2601

Email: foi@dss.gov.au

External review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply to the Australian Information Commissioner (Information Commissioner) to review a decision made by an agency on internal review of an access refusal decision.

If you wish to have this decision reviewed by the Information Commissioner you must apply for the review, in writing or by using the online merits review form available on the Information Commissioner's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the Information Commissioner 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 Information Commissioner 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

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.

