



7 March 2017

Our reference: LEX 25344

Mr Thomas Randle

By email: foi+request-2963-45908d37@righttoknow.org.au

Dear Mr Randle

Decision on your Freedom of Information request

I refer to your request dated 17 January 2017 and received by the Department of Human Services (the **department**) on the same date, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

'I request under the Freedom of Information Act (1982) copies of the following documents:

All minute documents of the Department of Human Services since January 2016 where:

- a.) the Minister or a minister responsible for the department has authorised a decision to approve some action by the department (typically a "For decision" minute); and,
- b.) where the purpose of the minute decision is related to some or all aspects of the Online Compliance Interventions program; and,
- c.) exclude from the scope of this request any email correspondence, and the names and contact information for any public service staff or advisors may be removed from any document within the above scope without further consultation.'

Third party consultation

On 16 February 2017 the department advised you that we were required to consult with a third party organisation under section 27 of the FOI Act. This was based on the documents initially retrieved as relevant to the subject matter of your request. During the further processing and review of the documents retrieved, it was determined that there are no documents that match the exact scope of your request.

Deemed Refusal

As the department was not required to consult with a third party, a decision on this request was due to be notified to you on 16 February 2017. Under section 15AC(3) of the FOI Act, because decision notification did not occur, the decision is taken to be a deemed refusal. Despite this, we have continued to process your request and my decision is below.

My decision

I have decided to refuse your request for access under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents you have requested and I am satisfied that they do not exist. Please see **Attachment A** for the reasons behind 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. You can ask for an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment B** for more information about how arrange a review.

Further assistance

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

Yours sincerely

Authorised FOI Decision Maker
Freedom of Information Team
FOI and Litigation Branch | Legal Services Division
Department of Human Services
FOI.LEGAL.TEAM@humanservices.gov.au

Attachment A

REASONS FOR DECISION

What you requested

- 'I request under the Freedom of Information Act (1982) copies of the following documents:
All minute documents of the Department of Human Services since January 2016 where:
 - a.) the Minister or a minister responsible for the department has authorised a decision to approve some action by the department (typically a "For decision" minute); and,
 - b.) where the purpose of the minute decision is related to some or all aspects of the Online Compliance Interventions program; and,
 - c.) exclude from the scope of this request any email correspondence, and the names and contact information for any public service staff or advisors may be removed from any document within the above scope without further consultation.'

What I took into account

In reaching my decision I took into account:

- your original request dated 17 January 2017;
- documents that may have fallen within the scope of your request;
- consultations with departmental officers about:
 - the nature of the documents;
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**);
- 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 department's Ministerial Coordination and Parliamentary Branch (MCPB) conducted searches of the department's database that records correspondence between the department and the Minister's office. That branch retrieved briefing documents that referred

to the Online Compliance Intervention and that were originally considered to be within the scope of the request because of their titles.

Based on the documents originally retrieved by MCPB, we identified that third party consultation was required. On 16 February 2017 we advised you that we were required to consult with a third party organisation under section 27 of the FOI Act.

Subsequently the documents identified by MCPB were reviewed by the department's Customer Compliance Division who own the documents and are the subject matter experts. During that review it was determined that the documents identified by MCPB do not meet the description of 'for decision' minutes identified in your request. On that basis there are no documents that fall within the scope of your request.

On the basis of the department's searches, 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 do not exist.



Attachment B

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 an 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 a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under the FOI Act, you can apply for a review of an FOI decision by:

1. the Australian Information Commissioner.

Note 1: There are no fees for these reviews.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in the department within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

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

Note 3: The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

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 Department of Human Services' decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the department's decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may 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:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also 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 review before complaining about a decision.