



14 March 2017

Our reference: LEX 26182

Mr Rodney Malone  
Right to Know

By email: [foi+request-2995-6659a80e@righttoknow.org.au](mailto:foi+request-2995-6659a80e@righttoknow.org.au)

Dear Mr Malone

### Decision on your Freedom of Information request

I refer to your request, dated 30 January 2017 and received by the Department of Human Services (the **department**) on the same day for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

'I would like to know the retention period of the [sic] following documents/information held by the department. The information submitted by Newstart and Austudy applicants when making a claim. These include:

1. online or paper application form
2. fortnightly income declarations/asset updates
3. All other supporting documentation to process the claim such as proof of citizenship, lease, bank statements, detailed income asset forms, rent certificates, employment [sic] termination certificate. Please indicate retention periods for the above info both in paper as well as electronic format including primary as well as secondary copies'.

### My decision

I have decided to refuse your request under section 24(1) of the FOI Act because a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied under section 21AA(1)(b) that your request does not provide sufficient information to enable the department to identify the documents you are seeking, as required by section 15(2)(b) of the FOI Act.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

### You can ask for a review of our decision

If you disagree with the decision you can ask for a review. There are two ways you can do this. You can ask for an internal review from within the department, or 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 to arrange a review.

**Further assistance**

If you have any questions please email [FOI.LEGAL.TEAM@humanservices.gov.au](mailto: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



Attachment A

## REASONS FOR DECISION

### What you requested

- 'I would like to know the retention period of the following documents/information held by the department. The information submitted by Newstart and Austudy applicants when making a claim. These include:
  1. online or paper application form
  2. fortnightly income declarations/asset updates
  3. All other supporting documentation to process the claim such as proof of citizenship, lease, bank statements, detailed income asset forms, rent certificates, employment termination certificate.Please indicate retention periods for the above info both in paper as well as electronic format including primary as well as secondary copies'.

### Request consultation process

On 16 February 2017, I wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act as your request did not clearly identify the documents you were seeking access to. I gave you an opportunity to consult with the department to revise your request so as to remove the practical refusal reason. Specifically, the department suggested that you ask for specific documents rather than seek answers to questions. In addition the department referred you to a link: <http://www.naa.gov.au/naaresources/ra/2011-00714998.pdf> on the National Archives Resource page and invited you to visit that link with a view to assisting you with reformulating your request.

On 1 March 2017 you responded to the section 24AB (2) notice and stated:

'Thank you for your prompt reply. I see that the retention period schedule from National archives has been provided as a guide. Would it be possible for the department to identify the retention periods for the documents originally listed in my original request according to National archives retention schedule-as in which documents fall under which category as listed by national archives [sic]. The other thing I would like to know if there are documents that indicate that a retention period greater than the minimum retention period as per the National archives retention schedule is being subscribed by the department for the documents originally listed or strictly the period prescribed [sic] by National archives is being adhered to'.

The department is of the view that your response of 1 March 2017, does not provide any clarification towards the documents you are requesting. Instead you are asking further questions, answers to which can be located in the link already provided to you. Please review the link already referred to and in particular, page 8, under: *Payment and Service Delivery Management*, class no 60685 for details of the retention periods for the documents originally listed in your original request.

In relation to your additional request for information please consider the link already provided at page 2 under: *Application of this Authority* at paragraph 8 for information about the minimum retention period.

## What I took into account

In reaching my decision I took into account:

- your original request dated 30 January 2017;
- other correspondence with you on 16 February 2017 and 1 March 2017;
- consultations with departmental officers about:
  - the nature of the requested documents; and
  - 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.

Following the request consultation process outlined above, in accordance with section 24AB of the FOI Act, I am satisfied that a practical refusal reason still exists in that you have not provided sufficient information to identify the requested documents. The reasons for my decision are outlined below.

### *Practical refusal reason*

Section 24AA of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the request does not satisfy the requirement in section 15(2)(b) of the FOI Act (identification of documents).

Section 15(2)(b) of the FOI Act provides that a valid FOI request must:

'provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it'.

### *Why your request does not satisfy the requirement in section 15(2)(b)*

Your request and your subsequent correspondence was for answers to particular questions. It did not make any reference to specific documents. In order to assist you, the department provided a document via electronic link, which is publicly available, that it considers could provide answers to your questions and assist you to revise your request. The department does not consider however, that your subsequent correspondence has sufficiently identified any further documents. We note that the then, FOI Commissioner James Popple, commented in *Mills and Department of Immigration and Border Protection [2014] Alcmr 54 (10 June 2014)*, 'the department accepts that a request for documents can be phrased by reference to the information that those documents contain. However, in this case, your request does not provide enough specific information to enable us to identify the documents that you are seeking. A request under the FOI Act must be for documents, rather than for answers to questions or to seek information generally.'

### *Conclusion*

In summary, I am satisfied that your request does not satisfy the requirement in section 15(2)(b) of the FOI Act, in that it does not provide sufficient information to enable the department to identify the documents you are seeking.

I have found that a practical refusal reason exists in relation to your request for access to the documents. Accordingly I have decided to refuse your request under section 24(1) of the FOI Act.



**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 a 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 sections 54 and 54L of the FOI Act, you can apply for a review of a FOI decision by:

1. an Internal Review Officer in the Department of Human Services (the department); and/or
2. the Australian Information Commissioner.

**Note 1:** There are no fees for these reviews.

#### **Applying for an internal review by an Internal Review Officer**

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

**Note 2:** You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

#### **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](http://www.oaic.gov.au)  
Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001  
Email: [enquiries@oaic.gov.au](mailto: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](http://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](http://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](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.