



10 March 2017

Our reference: LEX 26376

Mr Justin Warren

By email: foi+request-3006-1f1144d4@righttoknow.org.au

Dear Mr Warren

Decision on your Freedom of Information request

I refer to your request received by the Department of Human Services (the **department**) on 1 February 2017 for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following documents:

'I request the following information relating to the new Online Compliance Intervention programme, the initiative to match Centrelink data with data from the Australian Tax Office (ATO) to detect potential overpayment and the recovery of those overpayments from citizens, referred to in the media as "robodebt".

1. *Documents, such as reports to management on the progress of the OCI programme, that provide a summary of the number of letters sent to payment recipients asking for more information ("Discrepancy Letters") and the value of potential debt identified in those letters.*
2. *Documents, such as reports to management on the progress of the OCI programme, that provide a summary of the number of debts raised against payment recipients and their value, both as a total and average.*
3. *Documents, such as reports to management on the progress of the OCI programme, that contain a breakdown of the number and value of debts in the following categories, each a subset of the total debts raised at that date:*
 - a. *Number of debts where the debt amount is determined to be exactly the same as when originally raised after response from the customer,*
 - b. *Number of debts where the debt amount is determined to be higher than originally raised after response from the customer, and the total or average amount of value adjustment required,*
 - c. *Number of debts where the debt amount is determined to be lower than originally raised after response from the customer, and the total or average amount of value adjustment required,*
 - d. *Number of debts where the debt amount is determined to be zero after response from the customer, and the total or average amount of debt adjustment required, For each category, the following summary totals should be provided at a minimum:*
 - i. *number of debts in the category*
 - ii. *total value of debts in the category*
 - iii. *amount of adjustment in debt amount required compared to the original debt amount identified.*

The summary totals should also be provided for the entire set of records, so that the category amounts can be compared to the total amounts.

I expect that such summary reports would be provided to management on at least a monthly basis, if not more frequently'.

On 22 February 2017, following a consultation process under section 24AB of the FOI Act, the scope of your request was limited to the following:

'I only require the latest document provided in each calendar week of this time period that contains the summary information I have requested. Where multiple documents exist that contain the same information, I only require the latest document as at 11:59pm on the Friday of that week.

If the information can be produced as a report from a database system (as per section 17 of the Freedom of Information Act 1988) that report will satisfy this request for information. e.g.: A summary report showing each statistic as at 11:59pm on the Friday of each calendar week from 1 June 2016 to the date of my initial request'.

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. Further, I have decided that the department is not able to produce a document containing the information you seek in accordance with section 17 of the FOI Act. 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. 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 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

REASONS FOR DECISION

What you requested

'I request the following information relating to the new Online Compliance Intervention programme, the initiative to match Centrelink data with data from the Australian Tax Office (ATO) to detect potential overpayment and the recovery of those overpayments from citizens, referred to in the media as "robodebt".

- 1. Documents, such as reports to management on the progress of the OCI programme, that provide a summary of the number of letters sent to payment recipients asking for more information ("Discrepancy Letters") and the value of potential debt identified in those letters.*
- 2. Documents, such as reports to management on the progress of the OCI programme, that provide a summary of the number of debts raised against payment recipients and their value, both as a total and average.*
- 3. Documents, such as reports to management on the progress of the OCI programme, that contain a breakdown of the number and value of debts in the following categories, each a subset of the total debts raised at that date:*
 - a. Number of debts where the debt amount is determined to be exactly the same as when originally raised after response from the customer,*
 - b. Number of debts where the debt amount is determined to be higher than originally raised after response from the customer, and the total or average amount of value adjustment required,*
 - c. Number of debts where the debt amount is determined to be lower than originally raised after response from the customer, and the total or average amount of value adjustment required,*
 - d. Number of debts where the debt amount is determined to be zero after response from the customer, and the total or average amount of debt adjustment required, For each category, the following summary totals should be provided at a minimum:*
 - i. number of debts in the category*
 - ii. total value of debts in the category*
 - iii. amount of adjustment in debt amount required compared to the original debt amount identified.*

The summary totals should also be provided for the entire set of records, so that the category amounts can be compared to the total amounts.

I expect that such summary reports would be provided to management on at least a monthly basis, if not more frequently'.

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 was too big to process. I gave you an opportunity to consult with the department to revise your request so as to remove the practical refusal reason.

On 22 February 2017 you revised your request to:

'I only require the latest document provided in each calendar week of this time period that contains the summary information I have requested. Where multiple documents exist that contain the same information, I only require the latest document as at 11:59pm on the Friday of that week.

If the information can be produced as a report from a database system (as per section 17 of the Freedom of Information Act 1988) that report will satisfy this request for information. e.g.: A summary report showing each statistic as at 11:59pm on the Friday of each calendar week from 1 June 2016 to the date of my initial request¹.

What I took into account

In reaching my decision I took into account:

- your request received 1 February 2017 and revised on 22 February 2017;
- consultations with departmental officers about searches conducted to find documents within the scope of your request;
- 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 only relevant business area who potentially held documents in scope of your request was the department's Compliance Risk Branch (the **Branch**).

The Branch conducted searches of their electronic records and undertook discussions with relevant internal stakeholders regarding the type of management information and operational information available. The Branch did not identify any documents matching the description in your request. The Branch has informed me that, upon close inspection of the documents that were initially expected to have fallen in the scope of your request, no reporting exists that matches the description you have provided.

On the basis of these 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.

Section 17 of the FOI Act

Section 17 of the FOI Act relevantly provides that:

- (1) Where:

- (a) a request ... is made in accordance with the requirements of subsection 15(2) to an agency;
 - ...
 - (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency;
- The agency shall deal with the request as if it were requested for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

Paragraph 3.185 of the Guidelines provides:

‘...the reference in s 17(1)(c)(i) to a ‘computer or other equipment that is ordinarily available’ means ‘a functioning computer system including software, that can produce the requested document without the aid of additional components which are not themselves ordinarily available ... [T]he computer or other equipment ... must be capable of functioning independently to collate or retrieve stored information and to produce the requested document.’

The Branch have clarified that management and operational information related to the Online Compliance Intervention programme is not held in a way that would allow it to be presented at the level of granularity you seek. The Branch has indicated that producing a document that contains the information you seek would involve the combination of information from three separate databases, and the analysis and validation of records on a case-by-case basis to identify outcomes and variations.

In order to extract the data relevant to your request, the department would be required to instruct a computer programmer to write a program that does not currently exist. Accordingly, I have been advised that there would be a substantial cost and delay involved in extracting the data, which would involve acquiring numerous approvals from the relevant areas of the department, developing the computer programming required and performing the data extraction.

The decision of the Federal Court in *Collection Point Pty Ltd v Commissioner of Taxation* [2012] FCA 720 (affirmed by the Full Court of the Federal Court in *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67) makes clear that where a new computer program is required to be written to produce a written document, then a computer is not being used in a manner that is ‘ordinarily available’ to the agency because of the extraordinary step that is required to be taken. In considering the obligations of the Australian Taxation Office (**ATO**), the Court held (at [22]):

The documents requested by Collection Point were not capable of being produced by the ATO by the use of a computer, being a use that is ordinarily available to the ATO for retrieving and collating stored information. Instead, to answer the request, the ATO would have been required to use a computer in an extraordinary manner, as compared to the ordinary processes available for the retrieval and collation of such material. Put simply, the ATO would be required to use a computer in a manner other than that which is ordinarily available to it.

I am satisfied that to produce a document containing data relevant to your request, the department would not be using a computer in a manner that is ordinarily available.

Based on the above, I am satisfied that section 17 of the FOI Act does not apply to your request, as the department cannot use an ordinarily available computer system to produce a written document containing the information you have requested.

If you would like to access information that is readily available relating to the services and payments that the department delivers, you can access this through making a request via statistics@humanservices.gov.au. Further, I note that the Australian Government publishes a comprehensive suite of data online at: <http://data.gov.au>.



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 an 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 an 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

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.