



11 April 2017

Our reference: LEX 28336

Mr Justin Warren

By email: [foi+request-3006-1f1144d4@righttoknow.org.au](mailto:foi+request-3006-1f1144d4@righttoknow.org.au)

Dear Mr Warren

### Freedom of Information Request – Internal Review Decision

I refer to your correspondence dated 14 March 2017 and received by the Department of Human Services (the **department**) on that same date. You have sought an internal review of the department's decision on 10 March 2017 in relation to your original request (LEX 26376) (the **Primary Decision**).

### Background

The department received your original request 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 documents from 1 June 2016 to the date of my initial request, inclusive.*

*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'.*

On 10 March 2017, the department provided you with the Primary Decision to refuse access, in full, to the documents that you had requested. This was on the basis that following a comprehensive search, no documents had been identified and that all reasonable steps had been taken to locate the documents you have requested and they do not exist.

On 14 March 2017, you requested an internal review of the Primary Decision. You stated:

*'I am writing to request an internal review of Department of Human Services's handling of my FOI request 'Online Compliance Debt Amount Summaries'.*

*The Minister for Human Services, Alan Tudge MP, has provided multiple media statements about the amount of debt identified by the Online Compliance program, as well as general statistics about the program such as the number of people who are sent what have been variously described as 'discrepancy' letters or 'initiation' letters. One assumes that he is not simply making up these numbers or pulling them from a fundamental orifice.*

*It therefore beggars belief that the Department has no documents containing any of the information I have requested, particularly when it first refused my request on the grounds that there were too many documents, only to then discover that there are no documents when I attempt to narrow my request to something more tractable.*

*The Department appears to be deliberately frustrating FOI requests by making it impossible to guess at the particular magical incantation/description of documents that would result in any information being released whatsoever. On multiple occasions I have attempted to contact the FOI group by means other than email in order to discuss the matter constructively, but have been steadfastly avoided on all occasions.*

*A cynical person might suggest that this behaviour is designed to deliberately avoid any external scrutiny of the Department whatsoever.'*

The department acknowledged your request for an FOI Internal Review on 20 March 2017.

### **Internal Review Decision**

I have reviewed the Primary Decision and made a fresh decision on your request. In light of the amount of work involved for the department to process your request, I am satisfied that a 'practical refusal reason' exists pursuant to section 24(1) of the FOI Act as processing your request 'would substantially and unreasonably divert the resources' of this agency.

### **Reasons for my decision**

I am authorised under subsection 23(1) of the FOI Act to make internal review decisions under section 54C of the FOI Act. My decision and reasons are set out below.

In reaching my decision, I took into account:

- the terms of your original request dated 1 February 2017 and your revised request on 22 February 2017;
- the Primary Decision dated 10 March 2017;
- the terms and submissions of your internal review request dated 14 March 2017;
- documents falling within the scope of your request;
- consultations with department 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**); and
- The FOI Act.

### **Section 24AA - too much work for the department**

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to an FOI request if the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.

Section 24AA(2) of the FOI Act sets out certain factors which the department must consider when determining whether providing access in relation to a request would substantially and unreasonably divert the department's resources. The department must specifically have regard to the resources that would have to be used for:

- identifying, locating or collating the documents within the department's filing system;
- deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for examining the document or consulting in relation to the request;
- making a copy, or an edited copy, of the document, and
- notifying any interim or final decision on the request.

Section 24(1) states that the department must undertake a request consultation process if the department is satisfied that a practical refusal reason exists. Section 24AB (2) sets out the request consultation process. Section 24AB(6) says that the applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- withdraw the request,
- make a revised request, or
- indicate that the applicant does not wish to revise the request.

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 documents from 1 June 2016 to the date of my initial request, inclusive.*

*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'.*

On 10 March 2017, the department provided you with the Primary Decision to refuse access, in full, to the documents that you had requested. This was on the basis that following a comprehensive search, no documents that met the scope of the request had been identified and that all reasonable steps had been taken to locate the documents you have requested and they do not exist.

#### Does section 17 of the FOI Act apply

Section 17 of the FOI Act provides that:

(1) Where:

(a) a request ... is made in accordance with the requirements of subsection 15(2) to an agency;

...

(a) 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.’

As stated in the Primary Decision, 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.

Advice from the department’s Compliance Risk Branch and Information Services Branch indicates that a voluminous amount of work will be involved firstly to extract the data and secondly to identify the outcomes and variations. In particular, a new program would need to be developed to extract data from the department’s IT systems. This would involve sourcing the data from three different databases, interrogating individual records, conducting independent quality assurances and obtaining all the necessary approvals from various business areas. The extracted data would then need to be analysed and validated potentially on a case by case basis, in order to deliver the report at the granular level you have requested. This represents a significant amount of work to the department for data that does not currently exist on IT systems, and would substantially and unreasonably divert the resources of the department from its other operations as specified in section 24AA(1)(a)(i) of the FOI Act.

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 it 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 steps 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 uphold the Primary Decision and 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 have any questions please email [FOI.LEGAL.TEAM@humanservices.gov.au](mailto:FOI.LEGAL.TEAM@humanservices.gov.au).

Yours sincerely

Lisa

Authorised FOI Decision Maker  
Freedom of Information Team  
FOI and Litigation Branch | Legal Services Division  
Department of Human Services



**Attachment A**

**INFORMATION ON RIGHTS OF REVIEW**

**FREEDOM OF INFORMATION ACT 1982**

**Application for review of decision**

The *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by the Information Commissioner.

**Information Commissioner review**

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

**Complaints to the Commonwealth Ombudsman**

You may 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.