



14 March 2017

Our reference: LEX 27077

Mr Graeme Smith

By email: [foi+request-3039-73e673e4@righttoknow.org.au](mailto:foi+request-3039-73e673e4@righttoknow.org.au)

Dear Mr Smith

### Decision on your Freedom of Information request

I refer to your request dated 11 February 2017 and received by the Department of Human Services (the **department**) on 13 February 2017 for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following documents:

'....

The Minister (Mr Tudge) has stated that the main concern of this 'system' is to ensure the all claimants receive the correct amount: to quote his words "no more and no less".

...

This statement indicates that as well as identifying over payments ("no more"- the value of \$300m has been publically quoted) the system must also identify occasions when there have been underpayments (no less).

I request that you provide me with details as to:

what value of underpayments have been identified by the process?

Additionally, what value of reimbursements have been sent out to correct this?'

### 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. 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](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

## REASONS FOR DECISION

### What you requested

'....

The Minister (Mr Tudge) has stated that the main concern of this 'system' is to ensure the all claimants receive the correct amount: to quote his words "no more and no less".

...

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### What I took into account

In reaching my decision I took into account:

- your original request dated 11 February 2017;
- 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 Debt Management Branch who have responsibility for the subject matter of your request, has advised that there are no compiled reports that contain the information you seek. The relevant data is not collated in any format.

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;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- (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.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

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 Debt Management and Compliance Risk Branches do not produce reports on the value of underpayments or the value of reimbursements. The data is held on individual records and is not compiled for broader analysis.

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, 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](mailto: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 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 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](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.