



24 April 2017

Our reference: LEX 28805

Mr Justin Warren

By email: [foi+request-3180-243da4f1@righttoknow.org.au](mailto:foi+request-3180-243da4f1@righttoknow.org.au)

Dear Mr Warren,

### Decision on your Freedom of Information request

I refer to your request, dated 24 March 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 documents:

'... those documents that authorised the release of information under section 208(1)(a) of the Social Security (Administration) Act 1999 ([http://www.austlii.edu.au/au/legis/cth/consol\\_act/ssa1999338/s208.html](http://www.austlii.edu.au/au/legis/cth/consol_act/ssa1999338/s208.html)) between the dates of 1 June 2016 to 1 March 2017 (inclusive) that are classed under Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015 section 10 (Mistake of fact) ([https://www.legislation.gov.au/Details/F2015L01267/Html/Text#\\_Toc419446044](https://www.legislation.gov.au/Details/F2015L01267/Html/Text#_Toc419446044))'.

### 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

**Jessica**

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](mailto:FOI.LEGAL.TEAM@humanservices.gov.au)

## Attachment A

# REASONS FOR DECISION

### What you requested

'... those documents that authorised the release of information under section 208(1)(a) of the Social Security (Administration) Act 1999 ([http://www.austlii.edu.au/au/legis/cth/consol\\_act/ssa1999338/s208.html](http://www.austlii.edu.au/au/legis/cth/consol_act/ssa1999338/s208.html)) between the dates of 1 June 2016 to 1 March 2017 (inclusive) that are classed under Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015 section 10 (Mistake of fact) ([https://www.legislation.gov.au/Details/F2015L01267/Html/Text#\\_Toc419446044](https://www.legislation.gov.au/Details/F2015L01267/Html/Text#_Toc419446044))'.

### What I took into account

In reaching my decision I took into account:

- your original request dated 24 March 2017;
- any documents that fall 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**); and
- 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 Ombudsman and Information Release Branch (the **Branch**) is primarily responsible for managing the release of information under certain provisions of the social security law by the department. This Branch was best placed to conduct searches of their electronic databases due to the terms of your request (which is narrower than your previous FOI request – LEX 27960). Information Release section records are maintained electronically in the Information Release Computer System (IRCS). Multiple searches were conducted on the IRCS and the Branch did not identify any documents that were issued

between 1 June 2016 and 1 March 2017 (inclusive) under section 10 (Mistake of fact) of the *Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015*.

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.



## 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](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.