



23 May 2017

Our reference: LEX 29262
Keith Owen

By email: foi+request-3437-a8e4ef83@righttoknow.org.au

Dear Mr Owen

Decision on your Freedom of Information request

I refer to your revised request dated 22 April 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 certain information, as follows:

'The information sought has its genesis from a statement the Secretary for DHS made to the Senate Estimates Committee recently where she stated that DHS reviews statements made about the Department of Human Services clients statements in the media including Social Media.

Katherine Campbell specifically stated that DHS Employees review client's files and send a brief to the Minister for Human Services the Hon Alan Tudge MP.

We want to know how many clients of the Child Support arm of DHS have had their files reviewed as a result of making critical statements about the Child Support arm of the Department of Human Services.

We wish to know specifically if any clients have had their files 'reviewed' by the Department and as a result either the file or a brief of the client was sent to the Minister for clients who are members of the group "Child Support Australia - Time for Reform and Fairness", or any other activist group seeking reform of the Child Support Arm of the Department of Human Services.

The information we seek is very specific. If an appropriate response is not provided at the end of the 28 review period, we shall forward a representative complaint to the Office of the Information Commissioner.'

My decision

In relation to that part of your request for:

'We want to know how many clients of the Child Support arm of DHS have had their files reviewed as a result of making critical statements about the Child Support arm of the Department of Human Services.'

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.

In relation to that part of your request for:

'We wish to know specifically if any clients have had their files 'reviewed' by the Department and as a result either the file or a brief of the client was sent to the Minister for clients who are members of the group "Child Support Australia - Time for Reform and Fairness", or any other activist group seeking reform of the Child Support Arm of the Department of Human Services.'

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 as well as the relevant sections of the FOI Act.

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

Charlotte
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

On 22 April 2017, you wrote to the department with the following request:

'I respectfully request data on the total number of Clients who have their files reviewed as a result of making critical statements against the Department of Human Services and the number of 'briefs' sent to the Minister for Human Services, the Hon Alan Tudge MP as a result of making critical statements against the Department of Human Services.

With respect to this data, I request a break up of numbers based on each Arm of the Department of Human Services:

1. Centrelink Clients
2. Family Tax Benefit Clients
3. Child Support Clients'

Request consultation process

On 26 April 2017, I wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act as I could not 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.

On the same day you revised your request to be:

'The information sought has its genesis from a statement the Secretary for DHS made to the Senate Estimates Committee recently where she stated that DHS reviews statements made about the Department of Human Services clients statements in the media including Social Media.

Katherine Campbell specifically stated that DHS Employees review client's files and send a brief to the Minister for Human Services the Hon Alan Tudge MP.

We want to know how many clients of the Child Support arm of DHS have had their files reviewed as a result of making critical statements about the Child Support arm of the Department of Human Services.

We wish to know specifically if any clients have had their files 'reviewed' by the Department and as a result either the file or a brief of the client was sent to the Minister for clients who are members of the group "Child Support Australia - Time for Reform and Fairness", or any other activist group seeking reform of the Child Support Arm of the Department of Human Services.

The information we seek is very specific. If an appropriate response is not provided at the end of the 28 review period, we shall forward a representative complaint to the Office of the Information Commissioner.'

What I took into account

In reaching my decision I took into account:

- your original request dated 22 April 2017 and your revised request on 26 April 2017;
- consultations with departmental officers about 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.

Following the request consultation process outlined above, I am satisfied that a practical refusal reason still exists in that you have not provided such information concerning the document as is reasonably necessary to enable the department to identify it.. The reasons for my decision, including consideration of the factors I am required to take into account in accordance with section 24AA(2), 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)

You have requested:

We want to know how many clients of the Child Support arm of DHS have had their files reviewed as a result of making critical statements about the Child Support arm of the Department of Human Services.'

Your revised request seeks access to the number of child support parents whose files have been reviewed because they have made "critical statements about the Child Support arm" of the department. There is no time period associated with this part of your request.

In your email, dated 26 April 2017, you referred generally to statements made by the Ms Kathryn Campbell, the department's Secretary, during the 2 March 2017 hearing of the Senate Community Affairs Legislation Committee. However, you have not clearly identified a particular statement made by the Secretary. Because you were not more specific about which of the statements made by the Secretary relate to your request I was not able to use this information to clarify the documents you were seeking to access.

Moreover, it is still unclear what you mean by 'critical statements'. This could refer to formal complaints received by the department from individual customers or to general statements made in the media. As discussed in my letter dated 26 April 2017, a customer may criticise

the department in a range of contexts including when applying for a payment or seeking review of a decision. It is likely that in each of these circumstances the customer's record will be reviewed. However such a review may be more properly characterised as being for the purpose of assessing the customer's eligibility for a payment or for considering the merits of an appeal. Moreover, in some cases a service officer may access the record of a customer, who has recently made a complaint, for reasons entirely unrelated to that complaint, for instance to update their contact details.

Based on the information you have provided in your request, it is not possible for the department to reasonably identify which customers, or the nature of critical statements, that fall within the scope of your request.

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.

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.

In relation to that part of your request for:

'We wish to know specifically if any clients have had their files 'reviewed' by the Department and as a result either the file or a brief of the client was sent to the Minister for clients who are members of the group "Child Support Australia - Time for Reform and Fairness", or any other activist group seeking reform of the Child Support Arm of the Department of Human Services.'

The Customer Service Branch, Child Support Smart Centres Division and the Community and Media Engagement Branch conducted searches for the documents you are seeking. You have asked for information by reference to a customer's membership in either the "Child Support Australia – Time for Reform and Fairness" group or any other 'activist group'. These branches could not identify any documents meeting this part of your request.

I undertook further consultations and was informed that the department does not record customer membership in groups such as 'Child Support Australia – Time for Reform and Fairness'. Further, the department does not review a parent's child support case based on membership in, or affiliation with, any activist groups.

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 document does 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 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 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 Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian 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 Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Commonwealth 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 Commonwealth Ombudsman may be made in person, by telephone or in writing. The Commonwealth 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.