



29 June 2017

Our reference: LEX 29909

Mr Anatoly Kern

By email: [foi+request-3572-848b6b87@righttoknow.org.au](mailto:foi+request-3572-848b6b87@righttoknow.org.au)

Dear Mr Kern

### Decision on your Freedom of Information request

I refer to your request, dated and received by the Department of Human Services (the **department**) on 26 May 2017, for access under the *Freedom of Information Act 1982* (the **FOI Act**). Your request was for the following documents:

'I would like to request the information leading to the recent appointment of Katharine Hay as an Acting Child Support Registrar, specifically:

1. Reasons for assignments (within the definitions of 10a(1) of CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988
2. Any correspondence and consultation leading to the appointment and concluding so.
3. List of the positions/time periods previously held by Katharine Hay within DHS.
4. Remuneration and allowances provided on appointment.'

### My decision

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.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

### You can ask for a review of our decision

If you disagree with 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

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



**Attachment A**

## **REASONS FOR DECISION**

### **What you requested**

- 'I would like to request the information leading to the recent appointment of Katharine Hay as an Acting Child Support Registrar, specifically:
  1. Reasons for assignments (within the definitions of 10a(1) of CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988
  2. Any correspondence and consultation leading to the appointment and concluding so.
  3. List of the positions/time periods previously held by Katharine Hay within DHS.
  4. Remuneration and allowances provided on appointment.'

### **Request consultation process**

On 31 May 2017, the department provided a notice of intention to refuse your request under section 24AB(2) of the FOI Act, as your request did not clearly identify the documents you were seeking access to. In particular, the department highlighted two issues with the wording of your request.

The first issue was in relation to the phrase 'reasons for assignments' in part 1 of your request. The department explained that the meaning of this phrase is unclear for the following reasons:

- the pluralisation of the word 'assignment' indicates you are seeking reasons for more than one assignment yet you appeared to be seeking documents related to a single position; and
- you did not specify a particular 'document of an agency', in line with section 11(1) of the FOI Act. Rather, your request was for information.

It was open to you to clarify the meaning of this phrase in the context of your request. In particular, the department suggested that you refer to a specific document in your request, rather than to information. To this end, you were referred to section 4 of the FOI Act for a list of what qualifies as a 'document'.

The second issue with your request was in relation to the phrase 'and concluding so' in part 2 of your request, which was for, 'any correspondence and consultation leading to the appointment and concluding so.'

The department explained that, although it is clear what you mean by the first part of your request for, '(a)ny correspondence and consultation leading to the appointment', the phrase 'and concluding so' is ambiguous. For example, the description could mean:

- '(a)ny correspondence and consultation' up to the point where Katherine Hay was appointed; or, more broadly,
- '(a)ny correspondence and consultation' *including* the process of 'concluding' this appointment, which is not defined and may include a broad range of documents.

It was open to you to specify which of these options you intended to capture in your request. Alternatively, it was open to you to delete the phrase 'and concluding so' from part 2 of your request altogether, thereby removing the issue with the interpretation of this phrase.

On 3 June 2017, you advised that you did not wish to revise your request.

### **What I took into account**

In reaching my decision I took into account:

- your original request dated 26 May 2017;
- consultations with departmental officers about:
  - the nature of the requested documents; and
  - 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.

Following the request consultation process outlined above, in accordance with section 24AB of the FOI Act, I am satisfied that a practical refusal reason still exists in that you have not provided sufficient information to identify the requested documents. The reasons for my decision 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)*

As noted above, the department wrote to you on 31 May 2017 to provide you with notice of intention to refuse your request under section 24AB(2) of the FOI Act. In this letter, the department highlighted two issues with the wording of your request, as set out above, which meant that the department could not clearly identify the documents you were seeking access to.

On 3 June 2017, you advised that you did not wish to revise your request. In particular, you provided the following response to our consultation notice:

'You understand very well what I am asking and why in relation to the Acting General Manager of Child Support Smart Centers, but thanks for the confirmation of the extent of corruption within DHS'

This correspondence was taken to be you refusing to revise the scope of your request pursuant to section 24AB(6)(c).

Pursuant to section 24AB(9) of the FOI Act there is no further obligation on the department to take additional steps to assist you in further revising your request or re-consulting with you. On that basis, your request has been refused under section 24(1) of the FOI Act.

### *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.



**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](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.