



Australian Government

Comcare

29 August 2017

Our Ref: #150636-2017/8067

Mr James Smith

Email: foi+request-3879-08505e31@righttoknow.org.au

Dear Mr Smith

Your FOI Request

I refer to your correspondence of 8 August 2017 addressed to the Safety, Rehabilitation and Compensation Commission (SRCC) seeking access under the *Freedom of Information Act 1982* (the FOI Act) to:

'I request documents related to the ten most recent instances where an employee has sought information, advice, guidance, or opinion on their social media use in a private capacity.

I limit the scope of documents to:

- the original request from the employee*
- the agency/department's response*
- any follow-up questions and response*
- only those sent to a relevant HR / conduct / social media (or similar) team (rather than managers across all areas of the organisation)*
- where the original request was created in the last 2 years'*

I am an authorised decision-maker under section 23 of the FOI Act. This letter sets out my decision on your request for access.

Summary of 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 cannot be located or do not exist. Please see **Attachment A** for the reasons behind my decision.

Review rights

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. See **Attachment B** for more information about how arrange a review.

Further assistance

If you have any questions please email foi@comcare.gov.au or phone me on the number below.

Yours sincerely

FOI Delegate
FOI & Privacy
Technology and Information Management
Phone: 1300 366 979
Email: foi@comcare.gov.au
www.comcare.gov.au



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Attachment A

REASONS FOR DECISION

My reasons for deciding that the exemptions apply are discussed below.

Information Considered

In reaching my decision I have considered:

- your original request dated 8 August 2017
- the 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**);
- 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 SRCC is a statutory body that carries out regulatory functions in relation to Comcare and other authorities that determine workers' compensation claims under the SRC Act. The SRCC does not have employees, nor does it have a HR/conduct/social media (or similar) Team. Therefore, I am satisfied that the documents do not exist.

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 cannot be located or does not exist.

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:

- (i) an internal review officer within Comcare; or
- (ii) the Information Commissioner.

Internal Review

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- made in writing;
- made within 30 days of receiving this letter; and
- sent to the postal or email address shown in this letter.

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

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
Post: GPO Box 5218, Sydney NSW 2001
Email: enquiries@oaic.gov.au



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If a person has sought an internal review and no result of that review is provided within 30 days, then the applicant may apply to the Information Commissioner to review the matter.

An application form is available on the website at 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 Information Commissioner or the Commonwealth Ombudsman

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by Comcare in relation to your request. The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone: 1300 362 072 (local call charge)
Email: ombudsman@ombudsman.gov.au

Your enquiries to the Australian Information Commissioner can be directed to:

Phone: 1300 363 992 (local call charge)
Email: enquiries@oaic.gov.au

No particular form is required to make a complaint to the Ombudsman or the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify Comcare as the relevant agency.