



2 January 2018

Our reference: LEX 33625

Mr Anatoly Kern
Only by email: foi+request-4222-dcf8b38d@righttoknow.org.au

Dear Mr Kern

Decision on your Freedom of Information request

I refer to your request dated 28 November 2017, and received by the Department of Human Services (**department**) on the same date. You have sought access under the *Freedom of Information Act 1982 (FOI Act)* to the following:

- '1. The number of cases for the past 10 years, where the department administering CSRCA acted against foreign citizens with ignorance to limitations set in s 25C.
2. Out of above, the number of cases, where subsequent department actions led to severe/long term damage, disability or death.
3. Out of above, the number of cases, where the department has taken corrective actions, with specific details on such steps.'

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 24AA(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.

Yours sincerely

Ashleigh
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

- '1. The number of cases for the past 10 years, where the department administering CSRCA acted against foreign citizens with ignorance to limitations set in s 25C.
2. Out of above, the number of cases, where subsequent department actions led to severe/long term damage, disability or death.
3. Out of above, the number of cases, where the department has taken corrective actions, with specific details on such steps.'

Request consultation process

On 1 December 2017 I wrote to you providing 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. I gave you an opportunity to consult with the department to revise your request and suggested that you clarify the terms of your request so as to remove this practical refusal reason.

Specifically, I brought your attention to several parts of your request that had given rise to ambiguity and uncertainty as to the overall scope of your request. I noted that it was unclear what you meant by the term 'CSRCA'. As a result, I could not reasonably interpret the meaning of 'where the department administering CSRCA acted against foreign citizens (sic)' nor the meaning of 'with ignorance to limitations set in s 25C.'

I advised that the reference to foreign citizens also gave rise to ambiguity as it was unclear whether you intended to refer to current foreign citizens residing in Australia or foreign citizens who had previously resided in Australia at a point in time.

I also suggested that you clarify what you meant when you referred to 'severe/long term damage' and 'out of the above' because, in the context of this request, it was unclear, and remains unclear, what you mean when you reference these terms. That is, these parts of your request could be interpreted in a number of different ways.

Finally, I also suggested that you may wish to consider contacting the department's Information Management Branch should you wish to seek access to specific statistical information.

On 4 December 2017, you responded to this notice and stated the following via email:

'Yes, the terms requested for clarifications are clearly defined within the legislation governing your activity, including this act.'

In this correspondence you did not revise nor clarify the scope of your request.

What I took into account

In reaching my decision I took into account:

- your original request dated 28 November 2017;

- other discussions and correspondence with you on 1 December 2017, 4 December 2017 and 15 December 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 relation to your request, particularly given that you did not revise the scope of your request in response to the notice issued to you on 1 December 2017. It remains that you have not provided sufficient information to identify the documents you seek access to. 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)

I am not able to reasonably identify the documents you seek access to because several parts of your request are unclear.

Specifically, it is unclear what you mean when you refer to 'CSRCA' and, as a result, it is also unclear what you mean when you refer to 'where the department administering CSRCA acted against foreign citizens (sic).' Given this, it is also unclear what you mean when you refer to 'with ignorance to limitations set in s 25C'. Though it may be that you mean to refer to Child Support legislation when you refer to 'CSRCA' the department is not in a position to speculate as to the intended meaning of particular terms of your request. As I cannot identify what you mean when you refer to 'CSRCA', there is ambiguity as to all aspects of your request.

It is also unclear what you mean when you refer to foreign citizens throughout your request. That is, it is unclear whether you mean to refer to any foreign citizens, or foreign citizens currently living in Australia, or foreign citizens who at a point in time have resided in Australia.

Similarly, when you refer to 'severe/long term damage' it is unclear whether you intend to refer to cases where both severe and long term damage has resulted, or whether only severe or long term damage has resulted. It is also unclear how you mean to define

'damage' and whether you intend to limit reference to 'damage' to financial, physical or mental damage, or other types damage.

Finally, you identify that part three of the scope of your request is to be compared to the preceding parts of the scope of your request when you indicate that it is to be considered 'out of the above'. However, it is unclear whether you mean that this part of your request is to be compared to part one of your request or part two of your request, or both parts one and two of your request.

In part three of the scope of your request you also refer to 'corrective action, with specific details on such steps' however it is unclear what type of action you intend to refer to when you refer to 'corrective action.' For example, it may be that you mean to refer to corrective action undertaken to reverse an error or it may be that you intend to refer to actions undertaken to compensate for damage caused.

Though you were advised of these issues causing a lack of clarity in relation to the scope of your request via written notice on 1 December 2017 I note that you did not revise the scope of your request.

You refer to these terms being 'clearly defined within the legislation governing your activity, including this act' in your email dated 4 December 2017. However, you did not specifically identify which legislation you meant to refer to, given that a wide number of legislative materials apply to the work undertaken by this department. As a result, this correspondence did not remove any ambiguity as to the terms of your request.

Given this, it remains that the scope of your request gives rise to ambiguity as to what documents you seek access to. The terms I have drawn your attention go to the core of the scope of your request. Given that you have not clarified what you mean when you refer to these terms, it is unclear where the parameters of your request extend to.

Without clarification as to the terms of your request, I cannot reasonably identify the documents that do fall within scope of your request nor can I conduct reasonable searches to identify those documents.

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
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 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

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

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.