



22 January 2018

Our reference: LEX 33916

Mr Charles Powers

Only by email: [foi+request-4260-460fdd92@righttoknow.org.au](mailto:foi+request-4260-460fdd92@righttoknow.org.au)

Dear Mr Powers

### Decision on your Freedom of Information request

I refer to your request, dated 14 December 2017 and received by the Department of Human Services (**department**) on the same day. You have sought access under the *Freedom of Information Act 1982 (FOI Act)* to the following:

I would like all reports given to the Attorney-General, Attorney-General's Department or Office of Legal Services Coordination regarding compliance with the Legal Services Directions, including but not limited to annual compliance certificates, for the period 1 July 2015 to present.

#### 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(1)(b) of the FOI Act.

I am satisfied 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

#### Bruce

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



## Attachment A

# REASONS FOR DECISION

## Your request

Your request dated 14 December 2017 was made in the following terms:

I would like all reports given to the Attorney-General, Attorney-General's Department or Office of Legal Services Coordination regarding compliance with the Legal Services Directions, including but not limited to annual compliance certificates, for the period 1 July 2015 to present.

## Request consultation process

On 9 January 2018, I wrote to you providing a notice under section 24AB(2) of the FOI Act that your request gave rise to a practical refusal reason.

The practical refusal reason was that your request did not provide such information as is reasonably necessary to enable the department to identify the documents that you were requesting. That letter also advised that my intention was to refuse your request on the basis of that practical refusal reason.

I gave you an opportunity to consult with the department to revise your request so as to remove the practical refusal reason. Specifically, the department suggested that you may wish to consider:

- separating your request to be for 'reports' and 'certificates'; or
- defining what you mean by 'reports'.

On 17 January 2018 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 request dated 14 December 2017;
- your correspondence dated 17 January 2018;
- 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 (**Guidelines**); and
- the FOI Act.

## Reasons for my decision

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, including consideration of the factors I am required to take into account under section 24AA(2) of the FOI Act, 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) of the FOI Act*

Paragraph 3, Part 1, Schedule 1 of the *Legal Services Directions 2017 (Directions)* provides:

A non-corporate Commonwealth entity is to report as soon as possible to the Attorney-General or OLSC on significant issues that arise in the provision of legal services...

Additionally, paragraph 11.1 (d) and 11.1(da), Part 1, Schedule 1 of the Directions sets out further reporting requirements as follows:

...

(d) the entity gives reports as soon as practicable to the Attorney-General or OLSC about any possible or apparent breaches of the Directions by the entity, or allegations of breaches by the entity of which the entity is aware, and about any corrective steps that have been taken or are proposed to be taken, by the entity

(da) the entity reports to OLSC about the legal services expenditure and legal work of the entity, using a template approved by OLSC that specifies the matters to be reported, within 60 days after the end of each financial year.

These reports are entirely separate from the obligation to give the Office of the Legal Services Commission compliance certificates, as required by paragraph 11.2, Part 1, Schedule 1 of the Directions:

The accountable authority of a non-corporate Commonwealth entity is responsible for giving to OLSC, within 60 days after the end of each financial year, a certificate setting out the extent to which the accountable authority believes there has been compliance by the entity with the Directions.

Your request seeks 'all reports...regarding compliance with the Legal Services Directions' but then provides that these reports should include, but not be limited to, 'annual compliance certificates'.

The meaning of compliance certificates is specified in paragraph 11.2, Part 1, Schedule 1 of the Directions. The Directions are implicitly clear in demarcating between the obligation to provide reports on significant issues and reports on possible or apparent breaches of the Directions, and the obligation to provide a compliance certificate at the conclusion of the financial year.

On that basis, it is impossible to identify the documents you seek, because reports given to the Attorney-General, Attorney-General's Department or Office of Legal Services Coordination are not 'regarding compliance', rather they are reports on significant issues or possible breaches of the Directions.

Accordingly, it is not clear whether you are seeking:

- both 'reports' and 'certificates' (i.e. two separate kinds of documents); or
- only 'reports' (as set out in paragraphs 3 and 11.1 (d) of the Directions); or
- only 'certificates' (as set out in Direction 11.2 of the Directions),

which were given to the Attorney-General, Attorney-General's Department or Office of Legal Services Coordination regarding compliance with the Directions for the period 1 July 2015 to the date of your request.

I am satisfied that your request, which you refused to revise, does not provide enough information to allow the department to identify the documents being requested.

#### *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 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](http://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](http://www.ombudsman.gov.au)

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