



26 March 2018

Our reference: LEX 34896

Mr Justin Warren

Only by email: [foi+request-4373-ac3db2f7@righttoknow.org.au](mailto:foi+request-4373-ac3db2f7@righttoknow.org.au)

Dear Mr Warren

### Decision on your Freedom of Information request

I refer to your revised request, dated 26 February 2018 and received by the Department of Human Services (**department**) on the same date, for access under the *Freedom of Information Act 1982 (FOI Act)* made in the following terms:

'I alter the scope of my request to be for the first 63 procedures used in reverse chronological order from the date of my request (i.e. going backwards in time from the date of my request), or fewer if less than 63 procedures have been used.'

#### My decision

Section 24(1) of the FOI Act provides that if, after a consultation process, an agency is satisfied that a practical refusal reason still exists in relation to a request, the agency may refuse to grant access in response to that request.

Section 24AA(1)(b) of the FOI Act provides that a practical refusal reason exists in relation to an FOI request if the request does not satisfy the requirements of section 15(2)(b) of the FOI Act.

Section 15(2)(b) of the FOI Act provides that an FOI request must provide such information as is reasonably necessary to enable the department to identify the documents that are being requested.

I have decided to refuse your request under section 24(1) of the FOI Act because, following the request consultation process pursuant to section 24AB of the FOI Act, a practical refusal reason still exists under section 24AA of the FOI Act. I am satisfied that your request does not provide such information as is reasonably necessary to enable the department to identify the documents that you are seeking.

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 my decision**

If you disagree with my 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 to request 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

### **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

On 26 February 2018, you made a request for access under the FOI Act in the following terms:

'I request a copy of any documents that define how a decision is, or was, made to replace a document on the department's operational information website (those hosted on <http://operational.humanservices.gov.au/>) with a statement of the form:

"The guideline you have requested is potentially FOI exempt.

You have a right to apply for the document through FOI legislation.

You can request a copy from the department's Information Publication Scheme by:

..." etc.

I request only final versions of these documents, not draft versions.'

### Request consultation process

On 16 February 2018, 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 me to revise your request so as to remove this practical refusal reason. Specifically, I suggested that you consider revising the scope of your request by confirming whether you were seeking documents that outlined the department's operational procedures (**Operational Blueprints**), or other documents, such as email correspondence.

On 16 February 2018, you responded to this consultation notice to seek assistance in revising the scope of your request. You also stated:

'I am only requesting the formal procedure used to determine if a document that would otherwise have been published on the operational.humanservices.gov.au website to be replaced with this boilerplate text.

If different procedures have been used over time, then I request the documented procedure that was used at the time a website document was replaced with the "possibly FOI exempt" boilerplate, but only if that website document continues to be in that redacted form as at the date of my request. If the website document is no longer redacted, then I am unconcerned with if it was redacted at some point in the past or the procedure used for its redaction.'

On 22 February 2018, I wrote to you for the purpose of assisting you to revise the scope of your request. I suggested that you could consider limiting:

- the scope of your request to specific Operational Blueprint files or to documents related to a specific business area of the department; and
- the timeframe of the documents within scope of your request, noting that Operational Blueprint files are frequently updated.

On 26 February 2018, you revised the scope of your request in the following terms:

'I alter the scope of my request to be for the first 63 procedures used in reverse chronological order from the date of my request (i.e. going backwards in time from the date of my request), or fewer if less than 63 procedures have been used.'

On 28 February 2018, I wrote to you to confirm that the department would commence processing your request in accordance with the revised scope set out above.

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

In reaching my decision I took into account:

- your original request dated 12 February 2018 and your revised request dated 26 February 2018;
- other discussions and correspondence with you on 16 February 2018, 22 February 2018 and 28 February 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 (the **Guidelines**);
- 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 are outlined below.

In accordance with section 24AA(3), I did not consider your reasons for requesting access to the documents.

*Why your request does not satisfy the requirement in section 15(2)(b) of the FOI Act*

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 regarding the 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'.

I am unable to identify what you mean by the 'first 63 procedures used in reverse chronological order from the date of my request'.

Your email dated 16 February 2018 advised that you were only requesting:

'... the formal procedure used to determine if a document that would otherwise have been published on the operational.humanservices.gov.au website to be replaced with this boilerplate text.'

On this basis, I have considered your reference to 'procedures' to mean the formal documented procedures used to determine whether or not a document is to be made publicly accessible via the department's Information Publication Scheme (**IPS**).

Additionally, the phrase 'used in reverse chronological order from the date of my request' is unclear.

In your email dated 16 February 2018 you stated the following:

'If different procedures have been used over time, then I request the documented procedure that was used at the time a website document was replaced with the "possibly FOI exempt" boilerplate, but only if that website document continues to be in that redacted form as at the date of my request. If the website document is no longer redacted, then I am unconcerned with if it was redacted at some point in the past or the procedure used for its redaction.'

Taking the above information into account, it is unclear if you seek the formal procedures (used to determine whether or not a document is to be made publicly accessible) that were applied to:

- the 63 most recent Operational Blueprints (marked as "possibly FOI exempt") that were *published* on the operational.humanservices.gov.au website, as at the date of your request;
- the 63 most recent Operational Blueprints that were previously published but re-marked as "possibly FOI exempt" on the operational.humanservices.gov.au website, as at the date of your request; or
- the 63 most recent Operational Blueprints (marked as "possibly FOI exempt") that were *accessed* on the operational.humanservices.gov.au website as at the date of your request.

Therefore, a practical refusal reason exists in relation to your request, as your request did not provide such information as is reasonably necessary to enable the department to identify the documents that are 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. 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.