



6 April 2018

Our reference: LEX 35878

Mr Anatoly Kern

Only by email: foi+request-4452-0f2d28a2@righttoknow.org.au

Dear Mr Kern

Your Freedom of Information request

I refer to your request, dated 27 March 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)* to the following:

1. As of 1 March 2018, the number of cases where the Child Support Registrar (**CSR**) was making deductions against Disability Support Pension (**DSP**).
2. The number of cases out of above, where at the same time CSR made a determination for income above the level of DSP.
3. Minimum, maximum and median amount of bi-weekly deduction out of the cases per 1.

Consultation – your request gives rise to a practical refusal reason

Pursuant to the FOI Act, I am consulting with you to ask that you revise your request to provide more specific information about the documents you are requesting in order for me to reasonably be able to identify those documents.

Section 24(1) of the FOI Act provides that the department may refuse to give access to documents in accordance with an FOI request if:

- a practical refusal reason exists in relation to the request; and
- following a consultation process (under section 24AB of the FOI Act), the department is satisfied that the practical refusal reason still exists.

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.

Your request does not provide such information as is reasonably necessary to enable the department to identify the documents that you are seeking.

If you do not revise your FOI request in order to resolve the issues raised in this letter, I will have to refuse your request on the basis that a practical refusal reason still exists.

For a more detailed explanation, see **Attachment A**.

How to send a revised request

Within 14 days after you are given this notice, you must do one of the following, in writing:

- withdraw the request;
- make a revised request; or
- advise that you do not want to revise your request.

Your written response must be received by the department before the end of the 14 day consultation period. If no response is received by that date, your request will be taken to have been withdrawn, pursuant to the operation of the FOI Act.

The 14 day consultation period is not included in the initial 30 day processing period for your request.

Contact officer

I am the contact officer for your request. During the consultation period, you are welcome to ask for my help in revising your request. You can contact me:

- by writing to the address at the top of this letter; or
- by sending an email to FOI.Legal.Team@humanservices.gov.au.

Note: When you contact me, please quote the reference number **FOI LEX 35878**.

Yours sincerely

Alice

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



ATTACHMENT A

Practical refusal reason

Your request does not provide such information as is reasonably necessary to enable the department to identify the documents that you are requesting.

What I took into account

All three parts of your request could be interpreted in a number of ways and each is unclear for the reasons outlined below.

The number of cases where the CSR was making deductions against DSP

Point 1 of your request is unclear because it is not certain whether you seek information about:

- deductions that are the result of a change of assessment;
- deductions that are taken due to payers voluntarily forfeiting their income;
- deductions from payers with child support or maintenance arrears;
- deductions from payers with an ongoing liability; or
- some combination of the above.

To allow me to consult with the relevant business area to determine whether it is possible for the department to identify documents in the form that you seek, I require more specific information on the scope of this part of your request, in terms of the type and nature of the deductions to which you refer.

The number of cases out of above, where at the same time CSR made a determination for income above the level of DSP

Point 2 of your request relies on the clarity of point 1 of your request. As point 1 is unclear, I am not able to reasonably identify the documents that you seek in point 2 of your request.

In addition to the uncertainty that I have outlined under point 1 above, I am not certain what you mean when you state 'where at the same time CSR made a determination for income level above the level of DSP'. You may mean that you seek information on the number of cases, if there are any, where the child support amount that the department calculates for a recipient of the DSP exceeds their own rate of payment (if it were possible to determine this). Or you may seek information on the number of cases, if there are any, where the child support amount that the department calculates for a recipient of the DSP exceeds the maximum basic rate of a DSP. However, the rate of DSP that a customer receives varies depending on their circumstances and may be supplemented with other income and therefore I am not sure what you mean by 'the level of DSP'.

Point 2 of your request could also be interpreted to mean that you seek information on cases where the department has made deductions for child support purposes that exceed a recipient's actual income. However, the basic formula for child support assessment, available at <https://www.humanservices.gov.au/individuals/enablers/basic-formula>, does not allow for this circumstance to arise because it takes account of a person's self-support requirements.

Accordingly, there is unlikely to be information on cases where child support deductions exceed a person's actual income.

Minimum, maximum and median amount of bi-weekly deduction out of the cases per 1

In order to identify the documents that you seek in point 3 of your request, clarity is required in points 1 and 2.

Additionally, I am not certain what you mean by the term 'bi-weekly'. This could be interpreted to mean taking place every two weeks, or twice per week.

Under sections 24AA(1)(b) and 24 of the FOI Act, I intend to refuse your FOI request as a practical refusal reason exists. Under the Act, the practical refusal reason is that your request does not provide such information as is reasonably necessary to enable me to identify the documents you seek.

Revising your request

You may consider revising the scope of your request to remove the practical refusal reason summarised above. If you decide to revise the scope of your request, you may choose to, for example:

- specify the type and form of deductions in relation to which you seek information;
- clarify what you mean by the phrase 'number of cases out of above, where at the same time CSR made a determination for income above the level of DSP', particularly with regard to 'the level of DSP'; and
- define what you mean by the term 'bi-weekly'.

Even if you do provide the department with specific information that allows us to identify the documents you are seeking, a revision may still give rise to a practical refusal reason if the revised scope remains unclear or is too broad. You will need to take this into consideration when revising the scope of your request and it is open to you to narrow the scope of your request to a specific targeted category or categories of documents.

Relevant sections of the *Freedom of Information Act 1982*

Section 24AA(1)(b) 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.

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

Section 24AB(6) says that the applicant must, before the end of the consultation period, do one of the following, by written notice to the agency:

- withdraw the request;
- make a revised request; or
- indicate that the applicant does not wish to revise the request.

Section 24AB(7) of the FOI Act provides that the request is taken to have been withdrawn under at the end of the consultation period if:

- the applicant does not consult the contact person during the consultation period in accordance with the notice; or
- the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.