



3 August 2018

Our reference: LEX 38510

Keith Owen

By email only: foi+request-4717-61f27c07@righttoknow.org.au

Dear Keith Owen

Your Freedom of Information request – Consultation and Acknowledgment

I refer to your request, dated 27 July 2018 and received by the Department of Human Services (**department**) on the same date, for access to documents under the *Freedom of Information Act 1982 (FOI Act)*, made in the following terms:

1. Documents relating to the Child Support Program's internal procedures, instructions, guides or written policies in:
 - a. assisting participants with disabilities who:
 - i. are attending an AAT hearing;
 - ii. are participating in a hearing when they are self represented;
 - iii. have stated that they have difficulty providing evidence;
 - iv. have stated that their disability may impact on their psychological health; and
 - v. have indicated to the Department that they have trouble responding to questions or providing oral evidence in the hearing.
 - vi. have made an application for a change of assessment and indicated that they have difficulty providing information due to a range of disabilities including "depression, acquired brain injury, intellectual impairment, cognitive impairment, psychiatric impairment, psychological impairment, or any other condition that impairs their ability to communicate with the Department.
 - vii. have otherwise communicated to the Department regarding their disability in any other format for any other purpose.
2. DHS documents demonstrating:
 - a. its compliance with provisions of the Disability Discrimination Act 1992 (Cth);
 - b. its obligations to apply legislation that does not disadvantage people who have a disability.
3. DHS documents demonstrating the steps taken to ensure that it does not discriminate against people who have a disability, including but not limited to the conditions mentioned above.

We believe that this information is in the public interest to be made available publicly.

Consultation – your request gives rise to practical refusal reasons

Pursuant to the FOI Act, I am consulting with you because practical refusal reasons exist in relation to your request. Specifically, your request does not provide such information as is reasonably necessary to enable a responsible officer to identify the documents you seek.

Additionally, to the extent that I can identify the documents you may seek access to, to process your request would likely also result in a substantial and unreasonable diversion of the resources of the department to process.

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 the documents; and
- reduce the time that would be required to locate documents that may fall within the scope of your request.

If you do not revise your request in order to resolve the issues raised in this letter, I will have to refuse your request on the basis that one or more practical refusal reasons still exist.

For a more detailed explanation of what this means see **Attachment A**.

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:

- in writing to the address at the top of this letter
- via email to FOI.Legal.Team@humanservices.gov.au.

Note: When you contact us please quote the reference number **FOI LEX 38510**.

How to send us a revised request

Within 14 days after the day you receive this notice (**consultation period**), you must do one of the following, in writing:

- withdraw the request
- make a revised request, or
- tell us that you do not want to revise your request.

Your written response must be received by the department before the consultation period ends on **17 August 2018**.

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

In the event that you do decide to make a revised request, please be aware of the following information:

Your Address

The FOI Act requires that you provide us with an address which we can send notices to. You have advised your electronic address is foi+request-4717-61f27c07@righttoknow.org.au.

We will send all notices and correspondence to this address. Please advise us as soon as possible if you wish correspondence to be sent to another address or if your address

changes. If you do not advise us of changes to your address, correspondence and notices will continue to be sent to the address specified above.

Charges

The department will advise you if a charge is payable to process your revised request and the amount of any such charge as soon as practicable.

Administrative Release of Documents

The department has administrative access arrangements for the release of certain documents without the need for a formal FOI request. In the event that you do make a revised request, and unless you advise us otherwise, in processing your request we may provide you with documents under these administrative access arrangements where appropriate. The administrative access arrangements do not extend to information or materials of third parties. Where documents are released to you under the administrative access arrangements we will advise you in our decision letter.

Disclosure Log

Should you submit a revised request, any information released under the FOI Act may be published in a disclosure log on the department's website. Section 11C of the FOI Act requires this publication, however it is subject to certain exceptions, including where publication of personal, business, professional or commercial information would be unreasonable.

Exclusion of junior staff details

The department is working towards ensuring that all staff have a choice about whether they provide their full name, personal logon identifiers and direct contact details in response to public enquiries. If such details are included in the scope of your revised request this may add to processing time and applicable charges as it may be necessary to consider whether the details are exempt under the FOI Act. On this basis, unless you tell us otherwise, we will assume that these details are out of scope of your revised request and they will be redacted under section 22 of the FOI Act.

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

Practical refusal reasons

Your request:

- does not provide such information as is reasonably necessary to enable the department to identify the documents that you are requesting; and
- would result in a substantial and unreasonable diversion of the resources of the department if it were processed.

What I took into account

Identification of documents

Part 1 of your request

You state that you seek access to documents 'relating to' Child Support 'internal procedures, instructions, guides or written policies' on a range of particular topics. However, part 1 of your request is wholly unclear because I cannot identify whether you seek:

- 'internal procedures, instructions, guides or written policies'; or
- unidentified documents relating to 'internal procedures, instructions, guides or written policies'

Additionally, the reference to 'internal procedures, instructions, guides or written policies' is broad and ambiguous.

Department staff refer to Operational Blueprint information for procedural instruction and guidance in the course of delivery social security payments as is the department's ambit. As such, it may be that you mean to seek access to specific Operational Blueprint files, a range of which the department has made publicly accessible via the following link:

<http://operational.humanservices.gov.au/public/Pages/SiteMap/siteMap.html>

You also appear to be seeking information about the department's provision of legal services in the context of Administrative Appeal Tribunal (AAT) proceedings. The provision and performance of legal services by Commonwealth agencies is controlled by a set of binding rules in the form of the *Legal Services Directions 2017* (**directions**). Further information about these directions is available via the following link:

<https://www.ag.gov.au/LegalSystem/LegalServicesCoordination/Pages/Legalservicesdirectionsandguidancenotes.aspx>

In addition, the AAT provides information about reviews undertaken in the Social Services and Child Support Division:

<http://www.aat.gov.au/social-services-child-support-division/steps-in-a-review-of-a-decision-about-child-support>

Parts 2 and 3 of your request

You state that you seek access to documents 'demonstrating compliance' with legislation and documents 'demonstrating the steps taken to ensure it [the department] does not discriminate' however these parts of your request are also unclear.

Specifically, I cannot identify the documents you seek because it is unclear what you mean when you state that you seek documents of this nature 'demonstrating' compliance and steps taken by the department.

It may be that you intend these parts of the scope of your request to be requests for:

- internal documents assessing the department's compliance or operational procedures relating to application of legislation, and assurance of non-discrimination towards 'people who have a disability';
- external documents completed by third parties assessing the department's compliance or operational procedures relating to application of legislation, and assurance of non-discrimination towards 'people who have a disability';
- documents assessing compliance against all sections of certain legislation, or only certain sections of legislation;
- documents such as Operational Blueprint files as mentioned above.

Additionally, the statement that you seek documents 'not limited to the conditions mentioned above' in relation to point 3 of your request is broad and ambiguous, rendering the exact scope of your request unclear. It is unclear whether your request is limited to the terms of your request, or whether you intend that the department make a subjective determination about other documents that may fall within scope of your request given your request is 'not limited to the conditions mentioned above'.

Unreasonable diversion of resources

Given the breadth of the scope of your request as it currently stands, not only is your request unclear, but your request gives rise to a second practical refusal reason. The second practical refusal reason is that your request as currently framed, to the extent that I can identify the documents you seek, is so broad that processing your request would result in a substantial and unreasonable diversion of the department's resources.

This is because this part of your request would require seemingly all business areas of the department to undertake searches on all systems used across the department, to identify any documents that may fit the broad scope of your request.

Assistance to revise your request

As noted, the publicly available information referred to above may provide you with the information you seek. However, if you choose to revise your request, you may wish to consider identifying or describing the exact documents you seek.

Please note that if you choose to revise your request, one or more practical refusal reasons may still exist in relation to any revised request. In light of this, please also note that the department is unable to process a request where part of that request does not provide sufficient information to enable the department to identify the documents sought, or where processing part of that request (to the extent that some of the documents requested may be

identifiable) would result in the substantial and unreasonable diversion of the resources of the department from its other operations.

Relevant sections of the *Freedom of Information Act 1982*

Section 24(1) of the FOI Act provides that an agency 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 request consultation process under section 24AB of the FOI Act, the agency is satisfied that the practical refusal reason still exists.

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to an FOI request if the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.

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 a request must provide such information as is reasonably necessary to enable a responsible officer to identify the documents sought.

Section 24AA(2) of the FOI Act sets out certain factors which the department must consider when determining whether providing access in relation to a request would substantially and unreasonably divert the department's resources. The department must specifically have regard to the resources that would have to be used for:

- identifying, locating or collating the documents within the department's filing system;
- deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for examining the document or consulting in relation to the request;
- making a copy, or an edited copy, of the document, and
- notifying any interim or final decision on the request.

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

- 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.