



27 August 2018

Our reference: LEX 38510

Keith Owen

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

Dear Keith Owen

Decision on your Freedom of Information Request

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)* as follows:

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.

My decision

I have decided to refuse your request under section 24(1) of the FOI Act because, following a request consultation process under section 24AB of the FOI Act, practical refusal reasons still exist, namely 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; and
- to the extent that some of the documents you are seeking can be identified, processing your request would substantially and unreasonably divert the resources of the agency from its other operations.

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 arrange a review.

Further assistance

The department's Protocol for engaging people with disability

The department is a member of the National Disability Strategy Interdepartmental Committee which is responsible for carrying out the National Disability Strategy at a national level. The department has developed a protocol that applies to the entire department to provide guidance on the manner in which the National Disability Strategy is to be implemented.

The following is a link to the protocol which is publicly available on our website: <https://www.humanservices.gov.au/organisations/about-us/publications-and-resources/protocol-engaging-people-disability>. The information contained in the protocol may provide you with the information you are seeking in regards to how the department delivers services to persons who may have a disability.

If you have any questions please email 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

What you requested

On 27 July 2018, you made a request 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.

Request consultation process

On 3 August 2018, the department wrote to you to acknowledge your request and to advise that two practical refusal reasons exist in relation to your request, on the basis that:

- your request does not provide such information as was reasonably necessary to enable a responsible officer of the department to identify the documents you are seeking; and
- to the extent that some of the documents you are seeking could be identified, processing your request would substantially and unreasonably divert the resources of the department from its other operations

The department gave you an opportunity to consult with them to revise your request to remove these practical refusal reasons. Specifically, the department suggested that you consider identifying or describing specific documents and to reduce the time required to locate the documents that may fall within the scope of your request. .

Further the department provided a number of links to publicly available information which may provide the information that you seek.

On 3 August 2018, you responded to this notice and stated:

Thank-you for your response.

I advise the following:

1. This request is in the public interest.
2. This request was made to the AAT, and they were able to fulfil the request relatively easily. The same terms of reference were used.

I now request, what steps you have made to identify the extent of the documents required?

Further, due to the nature of the material requested, both being in the public interest, and given that there is a legislated duty for the Department of Human Services to adhere to the terms of the Disability Discrimination Act (Commonwealth), it is a reasonable request made in the public interest to make these documents available for public use and knowledge.

I thus request that you finalize the intended refusal so that I may request an external review to the Office of the Australian Information Commissioner, and then lodge a complaint with the Australian Human Rights Commission.

On 4 August 2018, you provided a second response to this notice and stated:

Accountability is the key here.

Can you please articulate why it is more difficult for the Department to comply with this request in light of the fact that other Government Departments/Agencies seem to have little difficulty with it?

On 9 August 2018, you provided a third response to this notice and stated:

A fair question has been asked regarding what steps have been taken to identify the documents concerned. This step is required before forming a 'preliminary' view that it presents too much work or the documents don't exist.

I will provide a further 7 days, and then I will escalate this to the OAIC not only for an external determination, but also as a formal complaint, and CC the Minister's office in seeking an explanation as to why DHS is not conforming to the Prime Minister's direction regarding open and accountable Government.

What I took into account

In reaching my decision I took into account:

- your original request dated 27 July 2018;
- other correspondence with you;

- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**); and
- the FOI Act.

Reasons for my decisions

I am authorised to make decisions under section 23(1) of the FOI Act.

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.

Following the request consultation process outlined above, in accordance with section 24AB of the FOI Act, I am satisfied that practical refusal reasons still exist, in that:

- you have not provided sufficient information to identify the requested documents; and
- that that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations.

The reasons for my decision are outlined below. In accordance with section 24AA(3) of the FOI Act, I did not consider your reasons for requesting access to the documents.

Power to refuse request – identification of documents

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 (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)

Although you provided several responses to the department's consultation, you have not revised the scope of your request so that it provides such information as is reasonably necessary to enable an FOI officer to identify the exact documents that you seek.

The three abovementioned responses you provided to the consultation notice have not revised the scope of your request. You have posed statements to the department, noting that you consider that the request is in the public interest, that other agencies have processed a similar request, and that the department is to be accountable. Further, you have asked questions to the department which did not revise the scope of your request.

As discussed in the consultation letter sent to you, the first part of your request is unclear because I cannot identify whether you seek:

- 'internal procedures, instructions, guides or written policies'; or
- some other unidentified documents relating to 'internal procedures, instructions, guides or written policies' (such as emails from supervisors to staff about 'internal procedures, instructions, guides or written policies').

In relation to the second and third parts of your request, I am unable to determine you mean by documents 'demonstrating compliance' with legislation and documents 'demonstrating the steps taken to ensure it [the department] does not discriminate'. This is because it is not clear what documents would 'demonstrate' compliance. For example, it is not clear whether you are seeking:

- 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'; or
- documents assessing compliance against all sections of certain legislation, or only certain sections of legislation.

Finally, in the third part of your request, you also state that your request is 'not limited to the conditions mentioned above'. 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 the scope of your request given your request is 'not limited to the conditions mentioned above'.

An FOI officer would be required to form a subjective view as to what would constitute the documents you are seeking across a number of different business areas and systems. The FOI Act does not allow the department to determine the scope of a request based on the opinion of the FOI officer. Rather, it provides a right to request access to documents that are sufficiently identified by the applicant.

Power to refuse request – diversion of resources

Section 24AA(1)(a)(i) of the FOI Act provides that:

(1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:

(a) the work involved in processing the request:

(i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations ...

In determining whether processing the request would substantially and unreasonably divert the department's resources, section 24AA(2) of the FOI Act requires me to have regard to the resources that would have to be used for the following:

- identifying, locating or collating the documents within the filing system of the department;

- deciding whether to grant, refuse or defer access to a document including resources used for examining the document and consulting with any person or body in relation to the request;
- making a copy or an edited copy of the document; and
- notifying of any decision on the request.

Paragraph 3.117 of the Guidelines relevantly provides:

Other matters that may be relevant in deciding if a practical refusal reason exists include:

- the staffing resources available to an agency for FOI processing;
- whether the processing work requires the specialist attention of a senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities;
- the impact that processing a request may have on other work in an agency, including FOI processing;
- whether an applicant has cooperated in framing a request to reduce the processing workload; and
- whether there is a significant public interest in the documents requested.

Why your request is substantial

Due to the breadth of the documents that may be captured by your broad and unclear request, an FOI officer would be required to undertake numerous investigations across a number of different business areas and systems in an attempt to identify a document that may fall within the scope of your request.

For example, the second and third parts of your request are not limited to any specific program area of the department. Assuming that they include emails from supervisors to staff about 'internal procedures, instructions, guides or written policies', it would mean an FOI officer would reasonably be required to conduct searches with each branch in the department, which consists of over 130 branches.

Applying a conservative estimate of one hour per branch to search and retrieve documents would equate to 130 hours of processing time. This does not include the time that would be required, if a document could be identified, to review the document for any relevant exemptions under the FOI Act.

Why your request is unreasonable

For the purposes of deciding whether processing your request would unreasonably divert the resources of the department from its other operations, I considered whether the substantial resource burden would be unreasonable having regard to the following:

- processing your request would take the equivalent of one departmental staff member working over three weeks to process your request; and
- the department receives approximately 400 FOI requests per month, the majority of which are requests from people seeking their own information.

I find that it would be unreasonable for one departmental staff member to work only on one request for a period of three weeks, when compared to the high volume of other requests that would be received and required to be processed by the department for the same period.

Furthermore, as paragraph 3.115 of the Guidelines explains, a broadly-worded request is more likely to constitute an unreasonable diversion of resources than a request that is narrowly focused.

Having regard to the above, I am satisfied that processing the request would substantially and unreasonably divert the resources of the department from its operations.

Therefore, I find that the practical refusal reason in section 24AA(1)(a)(i) of the FOI Act still exists in relation to the request.

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; and
- to the extent that some of the documents you are seeking can be identified, processing your request would substantially and unreasonably divert the resources of the agency from its other operations.

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 (FOI) 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 FOI 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 (**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 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

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

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