



20 September 2018

Our reference: LEX 39412

Mr Keith Owen

Only by email: [foi+request-4787-500b26e5@righttoknow.org.au](mailto:foi+request-4787-500b26e5@righttoknow.org.au)

Dear Mr Owen

### Your Freedom of Information (FOI) Request

I refer to your request, dated 8 September 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 would like to access the document "memorandum of understanding" between the ATO and DHS regarding the use of ATO data for DHS purposes.

#### Consultation – your request gives rise to a practical refusal reason

Your request gives rise to a practical refusal reason, in that it does not provide such information as is reasonably necessary to enable the department to identify the document you are requesting.

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.

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

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

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

#### 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 consultation period ends on **4 October 2018**.

If no response is received by that date, your request will be taken to have been withdrawn, pursuant to the operation of the FOI Act.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](mailto:FOI.Legal.Team@humanservices.gov.au).

**Note:** When you contact me, please quote the reference number **FOI LEX 39412**.

Yours sincerely

### **Alice**

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



## ATTACHMENT A

### What I took into account

Your request gives rise to a practical refusal reason, in that it does not provide such information as is reasonably necessary to enable the department to identify the documents that you are requesting.

Specifically, you have not provided sufficient information concerning the memorandum of understanding (**MOU**) that you are seeking access to. The department has a number of MOUs with the Australian Taxation Office (**ATO**). The identifying information that you have provided - that is, that you seek the MOU 'regarding the use of ATO data for DHS purposes' - could apply to more than one of these MOU. The reference in your request to 'the' MOU suggests that you are requesting a specific MOU, however I cannot identify which one.

You have also not identified whether you seek an MOU in relation to data exchange agreements between the two departments generally, or whether you seek an MOU in relation to data exchange agreements for a specific programme or payment, such as the Child Support programme or Family Assistance payments. You have also not identified whether you seek access to a current MOU or a finalised MOU.

Paragraph 3.54 of the FOI Guidelines provides:

If in doubt, the agency or minister should consult the applicant to discuss exactly what documents are being requested.

Because I cannot be certain of the document that you are seeking, I am consulting with you to determine precisely what document you are requesting.

### Assistance to revise your request

You may wish to revise the scope of your request by providing more specific information concerning the MOU that you are seeking access to, such as the specific programme of work it relates to.

Reviewing this publicly available material on the ATO website may assist you to revise the terms of your request: <https://www.ato.gov.au/About-ATO/Access.-accountability-and-reporting/In-detail/How-we-use-data-matching/?page=6>

Please note that, even if you do revise the terms of your request, a practical refusal reason may remain if the terms of your revised request are still unclear.

### Relevant sections of the FOI Act

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 a 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 a request must provide such information as is reasonably necessary to enable the department to identify the documents that are being requested.

Section 24AB(6) of the FOI Act says that the FOI applicant must, before the end of the 14 day consultation period, do one of the following, by written notice to the department:

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

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

- the applicant does not consult the contact person during the consultation period in accordance with this notice; or
- the applicant does not do one of the things mentioned in section 24AB(6) before the end of the consultation period.