



22 October 2018

Our reference: LEX 39599

Keith Owen

Only by email: foi+request-4815-70f0d5fa@righttoknow.org.au

Dear Mr Owen

Decision on your Freedom of Information Request

I refer to your revised request dated 1 October 2018 and received by the Department of Human Services (**department**) on the same day for access under the *Freedom of Information Act 1982* (**FOI Act**) to the following documents:

Any mandatory reports made by the Department of Human Services regarding data breaches by the Department of Human Services from March 2018 to present.
Individual names may be redacted to protect the client's identity.

My decision

I have decided to refuse your request for access under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents you have requested and I am satisfied that they do not exist.

Please see **Attachment A** for the reasons behind my decision.

You can ask for a review of our decision

If you disagree with any part of the 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

If you have any questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely

Bruce

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



Attachment A

REASONS FOR DECISION

What you requested

Your original request, dated 17 September 2018, was for:

I would like to access any reports made to the Office of the Australian Information Commission regarding any data breaches by the Department of Human Services from March 2018 when it became mandatory to report such breaches.

On 26 September 2018, the department 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 sufficiently identify the documents you were seeking access to.

On 1 October 2018, you revised your request to:

Any mandatory reports made by the Department of Human Services regarding data breaches by the Department of Human Services from March 2018 to present. Individual names may be redacted to protect the client's identity.

What I took into account

In reaching my decision I took into account:

- your revised request dated 1 October 2018;
- consultations with departmental officers about:
 - the nature of the documents;
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the FOI Act.

Reasons for my decisions

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

Section 24A of the FOI Act

Section 24A of the FOI Act provides that:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

In processing your request, I consulted with the Privacy Section, within the department's Programme Advice and Privacy Branch, which is responsible for reviewing privacy incidents

and managing the department's reporting obligations under the Notifiable Data Breaches Scheme.

The Privacy Section advised me that the department has not made any reports under the Notifiable Data Breaches Scheme between 1 March 2018 and the date of your request. Therefore the Privacy Section did not identify any documents matching the description in your request.

As I have consulted with the business area responsible for reporting breaches under the Notifiable Data Breaches Scheme, who advised me that no mandatory reports were made in the period you requested, I am satisfied that in accordance with section 24A of the FOI Act:

1. all reasonable steps have been taken to find the documents you requested; and
2. the documents do not exist



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 (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

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.