



10 December 2018

Our reference: LEX 40654

Mr Josh Morrison
Right to Know

Only by email: foi+request-4936-0a4f7c24@righttoknow.org.au

Dear Mr Morrison

Decision on your Freedom of Information Request

I refer to your request, dated 5 November 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 documents:

Please take this as my request under the relevant acts for all invoices or transactional data showing the costs of the SMS security (2 Factor Authentication) for the myGov Portal for each month from inception of the tool.

My decision

I have decided to refuse your request under section 24(1) of the FOI Act because a 'practical refusal reason' still exists under section 24AA of the FOI Act.

I am satisfied under section 24AA(1)(b) 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.

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 our decision

If you disagree with 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

Ellen

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

On 5 November 2018, you made an FOI request in the following terms:

Please take this as my request under the relevant acts for all invoices or transactional data showing the costs of the SMS security (2 Factor Authentication) for the myGov Portal for each month from inception of the tool.

Request consultation process

On 9 November 2018, I entered into formal consultation with you under section 24AB(2) of the FOI Act, as the following practical refusal reasons existed in relation to your request:

- the terms of your original request did not satisfy the requirement in section 15(2)(b) of the FOI Act in that your request did not provide such information as was reasonably necessary to enable the department to identify the documents that you were seeking; and
- to the extent that some of the documents you were seeking could be identified, processing your request would substantially and unreasonably divert the resources of the department from its other operations.

I provided you with an opportunity to consult with the department to revise your request to remove the practical refusal reasons. I also advised that, should a practical refusal reason remain following the consultation process I would be required to refuse your request.

Specifically, I suggested you consider revising the scope of your request by addressing the practical refusal reasons by:

- providing additional information to specify the legislation you are referring to when you use the phrase 'under the relevant acts';
- identifying whose invoices you are seeking and to whom they are addressed;
- specifying what 'transactional data' is referring to; and
- identifying what you mean by 'tool'.

On 12 November 2018, you provided a response to the departments' consultation email and advised the following:

I do not wish to modify the request in any way.

What I took into account

In reaching my decision I took into account:

- your original request dated 5 November 2018;
- correspondence with you regarding this request on 9 November 2018 and 12 November 2018;

- consultations with departmental officers about:
 - the nature of the requested documents; and
 - 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.

Following the request consultation process outlined above, in accordance with section 24(1)(b) of the FOI Act, I am satisfied that a practical refusal reason still exists in that you have not provided sufficient information to identify the documents you are requesting.

The reasons for my decision are outlined below.

Practical refusal reason

Section 24AA 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) of the FOI Act

In your email dated 12 November 2018, you indicated that you do not wish to revise your request.

Therefore, your request still does not provide enough information as is reasonably necessary to enable the department to identify those documents.

For the same reasons as explained in my section 24AB consultation letter dated 9 November 2018, your request does not identify the types of documents you are seeking. Specifically, it is unclear what you mean by:

- *'the relevant acts'* – the department is the delivery agency for the Centrelink, Child Support and Medicare programs and interacts with a range of Commonwealth legislation, including the *Social Security Act 1991*, *Child Support (Registration and Collection) Act 1998*, *Health Insurance Act 1973*, and *National Health Act 1953*. Accordingly, it is not clear which legislation you are referring to when you use the phrase 'relevant acts';
- *'all invoices'* – it is not clear whether you are requesting invoices relating to the payment for particular goods or services, and if so, for what and to whom the invoices are issued;

- *'transactional data'* – this term does not identify a document and could refer to payment transactions between the department and another party (for example, invoices, bills, quotes and evidence of payments) or any other kind of transfer of information (for example, information detailing when an SMS message is sent and details of the person and phone number the message was sent to);
- *'costs'* – this term is not clear and could be interpreted to refer to a number of different types of costs, including tangible and intangible costs. For example, it is not clear whether you are seeking delivery costs, implementation costs, telephony costs for the SMS authentication, operational costs of a particular software required, human resources costs; and
- *'for each month from inception of the tool'* - you have not referred to a date range and this phrase is unclear. The term 'tool' could refer to the SMS Factor Authentication, myGov or another resource used by the department. In addition, the use of the term 'inception' could mean: when the tool was first created; when the department first proposed to use the tool; when the department first obtained the tool; when the tool was first launched to the public; or, some other point in time.

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.

I have found that a practical refusal reason exists in relation to your request for access to the documents. 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 (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.