



Australian Government

Comcare

15 January 2019

Our reference: 2018/12870

Mr Arthur Jordan  
By email: [foi+request-5112-f78e3003@righttoknow.org.au](mailto:foi+request-5112-f78e3003@righttoknow.org.au)

Dear Mr Jordan

### Freedom of Information Request – Notice of Decision

I refer to your email dated 16 November 2018 making a request under the *Freedom of Information Act (1982)* (FOI Act) for access to:

*I seek any documents, notes or computer lists showing the number of clients who have been issued top-up hearing aids (not on the Free to Client list) and where the cost has been fully subsidized for hearing loss and/or tinnitus claims by Public Servants and/or Defence Contractors (if applicable) for the Financial Year ending 30 Jun 18.*

*I do not require any personal information which may be redacted, just a list of the number of people issued top-up hearing aids which are not on the Free to Client list but have had the cost fully subsidized by Comcare.*

### Summary of Decision

I have considered your request and decided to refuse 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 cannot be located or do not exist.

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

### Review rights

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. See **Attachment B** for more information about how arrange a review.

### Further assistance

If you have any questions please email [foi@comcare.gov.au](mailto:foi@comcare.gov.au) or phone me on the number below.

Yours sincerely

FOI Officer

## REASONS FOR DECISION

My reasons for deciding that the exemptions apply are discussed below.

### Information Considered

In reaching my decision I have considered:

- your original request dated 19 November 2018
- the documents that fall within the scope of your request;
- 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 (the **Guidelines**);
- the FOI Act.

### Reasons for my decisions

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

### Section 17 - Requests involving the use of computers

Comcare holds no documents within scope of your request. Therefore, it considered whether documents could be created under section 17 of the FOI Act – requests involving the use of computers. However, in this instance no document was able to be created.

Section 17 provides that:

- (1) Where:
- (a) the agency could produce a written document containing the information in discrete form by:
    - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information ...

The agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

The Guidelines at paragraph 3.182 advise:

Section 17 requires an agency to produce a written document of information that is stored electronically and not in discrete written form ... The obligation to produce a written document arises if:

- The agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information ...'

Comcare's Technology team has attempted to retrieve information based on payments made in relation to hearing aids. However, this report did not provide information in relation to whether the hearing aid was on the Free to Client list.

The Claims Management team provided a similar response and advised that Free to client services are encouraged and some employees choose this option. Those that still request other models of hearing aids, on a case by case basis, we may reimburse employees based on quotations provided by the employee. In some cases we pay for other models. However, we are unable to capture this data from our system.

Comcare's computer systems do not collect or store data in a way that enables your questions to be answered. Therefore, I have refused your request under section 24A of the FOI Act.

#### Section 24A – documents cannot be found or do not exist

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.

On the basis of the above, I am satisfied that in accordance with section 24A of the FOI Act:

1. all reasonable steps have been taken to find the documents; and
2. the documents cannot be located or does not exist.

## INFORMATION ON RIGHTS OF REVIEW

### *FREEDOM OF INFORMATION ACT 1982*

#### **Application for review of decision**

The *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by:

- (i) an internal review officer within Comcare; or
- (ii) the Information Commissioner.

#### **Internal Review**

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- made in writing;
- made within 30 days of receiving this letter; and
- sent to the postal or email address shown in this letter.

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

#### **Information Commissioner review**

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

If a person has sought an internal review and no result of that review is provided within 30 days, then the applicant may apply to the Information Commissioner to review the matter.

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

### **Complaints to the Information Commissioner or the Commonwealth Ombudsman**

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by Comcare in relation to your request. The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone: 1300 362 072 (local call charge)  
Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Your enquiries to the Australian Information Commissioner can be directed to:

Phone: 1300 363 992 (local call charge)  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

No particular form is required to make a complaint to the Ombudsman or the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify Comcare as the relevant agency.