



27 November 2018

Our reference: LEX 40973

Mr Benjamin Nolan
Right to Know

Only by email: foi+request-5118-4e295ab7@righttoknow.org.au

Dear Mr Nolan

Your Freedom of Information (FOI) Request - Consultation

I refer to your request, dated and received by the Department of Human Services (**department**) on 21 November 2018 for access under the *Freedom of Information Act 1982* (**FOI Act**) to the following documents:

Number of 'customers' who have a disability indicator on their file.

Consultation – your request gives rise to a practical refusal reason

Currently, your request gives rise to a practical refusal reason, as your request does not provide sufficient information as is reasonably necessary to enable the department to identify the documents that you are requesting.

I am asking you to revise your request to give me more specific details about the documents you are requesting.

For a more detailed explanation of what this means, see **Attachment A**.

If you decide not to provide further information or revise your request, I will have to refuse your freedom of information request as a 'practical refusal reason' exists.

How to send us a 'revised request'

Within the next 14 days (**consultation period**) 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 response will be expected by the end of the consultation period.

If no response is received during the consultation period, your request will be taken to have been withdrawn, pursuant to the operation of the FOI Act.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:

- in writing to the address at the top of this letter; or
- via email to FOI.LEGAL.TEAM@humanservices.gov.au.

Note: When you contact us please quote the reference number **FOI LEX 40973**.

Further Assistance

The following resources may be helpful to assist you in finding the information you are seeking, without the need for a formal FOI request:

- Department of Jobs and Small Business publishes a quarterly report on a range of job seeker compliance data. This report identifies and breakdowns job seekers on activity tested income support payments and has categorised them, including those who are part of the employment service programme, Disability Employment Services. You can find the report here: <https://www.jobs.gov.au/job-seeker-compliance-data>;
- The department publishes an Annual Report each year that outlines the department's Workplace Accessibility Plan 2016-19 and identifies the claims finalised for each payment type, including Disability Support Pension. The Annual Report can be found here: <https://www.humanservices.gov.au/organisations/about-us/annual-reports>;

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

What you requested

Number of 'customers' who have a disability indicator on their file.

What I took into account

Your request does not provide sufficient information to identify the documents you seek

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.

Section 15(2)(b) of the FOI Act requires that an FOI request must provide such information concerning the documents sought as is reasonably necessary to enable a reasonable officer of the department to identify those documents.

As your request currently stands, it does not provide such information as is reasonably necessary to enable the department to identify the documents that you are requesting.

Firstly, in your request the term 'customers' is unclear. I note that the department refers to people who use the department's services as 'customers', however it is unclear as to the type of customer you are referring to. The department services customers across a number of programs provided under the various spaces being, Medicare, Centrelink and Child Support. As such it is unclear as to whether you are referring to a particular group of customers (for example, Centrelink customers) who have identified as having a disability, or whether you are referring to all the members of the community we service.

Secondly, the term 'disability' itself is unclear as the term could be interpreted to refer to any condition which restricts a person's mental, sensory or mobility function. It can be temporary or permanent, it can be visible or invisible, and it may have a minimal or substantial impact on a person's abilities. Accordingly, it is not clear what type of disability you are referring to.

Thirdly, you have requested any documents which contain reference to the 'number of 'customers' who have a disability indicator on their file.' As this part of your request currently stands, I am unsure as to what you might consider to be a 'disability indicator.' For example, you might be referring to the department's specific disability support program, being the Disability Support Pension (**DSP**). As such, you may be referring to customers who are currently receiving or have been in receipt of DSP, or, alternatively, you may be referring to all customers across the department's programs who have been identified to have or have had a disability, regardless of whether those customers are in receipt of DSP or whether the disability is ongoing or temporary. Furthermore, the term 'indicator' could refer to any mention of a disability on a customer's file.

Finally, you have used the term 'number'. Please note that the right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require the department to create a new document in response to a request for access, except in limited circumstances under section 17 of the FOI Act.

As such I am unable to process your request until I can identify the specific documents that you are requesting. This is because whilst the FOI Act provides that you are entitled to request access to any document held by an agency, some documents may be exempt from

release. As a decision-maker I am unable to determine whether or not a document is exempt prior to locating and reviewing the document.

Assistance to revise your request

You may wish to consider revising the scope of your request to clarify the issues set out above by specifying:

- the types of documents you seek;
- a limited date range for your request; and
- additional information as to what you mean by 'customers', 'disability', 'disability indicator' and 'number'.

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 affected by any of the issues set out above.

Relevant sections of the *Freedom of Information Act 1982*

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.

Section 15(2)(b) of the FOI Act provides that a request must provide such information as is reasonably necessary to enable the agency to identify the documents that are being requested.

Section 24AB(6) says that the applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- withdraw the request,
- make a revised request, or
- indicate that the applicant does not wish to revise the request.

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

- the applicant does not consult the contact person during the consultation period in accordance with the notice, or
- the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.