



31 January 2019

Our reference: LEX 41703

Posty

Only by email: foi+request-5195-7043d1be@righttoknow.org.au

Dear Posty

Decision on your Freedom of Information Request

I refer to your request, dated 1 January 2019 and received by the Department of Human Services (**department**) on the same day, for access to documents under the *Freedom of Information Act 1982* (**FOI Act**) made in the following terms:

I request the total of the number of times any member of the public has asked for access to each non-website published successful documents on the FOI disclosure log other than the original successful applicant.

My decision

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

Furthermore, I am satisfied that the document cannot be produced under section 17 of the FOI Act, by using a computer system ordinarily available to the department.

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

Molly

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

I request the total of the number of times any member of the public has asked for access to each non-website published successful documents on the FOI disclosure log other than the original successful applicant.

What I took into account

In reaching my decision I took into account:

- your request dated 1 January 2019;
- consultations with departmental officers about:
 - the nature of the requested document;
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **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.

I consulted with the team responsible for FOI statistical reporting (**Team**) within the Employment Law & FOI Branch (**Branch**) regarding the document described in your request. The Team conducted searches of all Branch drives and mailboxes. The Team did not identify any documents matching the description in your request.

The Team advised me that the document you have requested is not in existence. This is because the department does not record the data outlined in your request in a discrete format. Whilst the Branch records data relating to the total number of disclosure log requests received by the department, this data is not connected to each specific disclosure log document. As such no report exists which specifies the total number of times any member of the public have asked for a access to each disclosure log document listed on the department's website (which is not available for direct download).

As such, the department does not hold any documents which provide the total number of times any member of the public has asked for access to documents listed on the disclosure log.

On the basis of these investigations and in accordance with section 24A of the FOI Act I am satisfied that:

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

Section 17 of the FOI Act

Section 17 of the FOI Act provides that:

(1) Where:

- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
- (c) 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; or
 - (ii) the making of a transcript from a sound recording held in the agency;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.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

Paragraph 3.207 of the Guidelines, citing the Full Federal Court's decision in *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67 (**Collection Point**) provides:

...the reference in s 17(1)(c)(i) to a 'computer or other equipment that is ordinarily available' means 'a functioning computer system including software, that can produce the requested document without the aid of additional components which are not themselves ordinarily available ... [T]he computer or other equipment ... must be capable of functioning independently to collate or retrieve stored information and to produce the requested document.

Does section 17 of the FOI Act apply?

In processing your revised request, the department considered whether, pursuant to section 17 of the FOI Act, a written document could be produced which would satisfy your request in a discrete form, by the use of a computer or other equipment that is ordinarily available to the department for retrieving or collating stored information.

I consulted with the Team, which confirmed that, in this instance, the department cannot produce discrete written documents which satisfy your request.

A new record is created on the Team's database for each disclosure log request received by the department. As a single request may seek documents in relation to more than one disclosure log matter, the Team would be required to manually review each record and tally the total number of requests for each disclosure log document.

As cited by in paragraph 3.207 of the Guidelines referred to above, the Full Court of the Federal Court in *Collection Point* explains, at [44] that:

Section 17(1)(c)(i) is directed at ensuring that an agency will not be obliged to produce a document unless the effective and comprehensive means of doing so are ordinarily available to it for the specified purpose. In that context, the computer or other equipment ordinarily available for the specified purpose *must be capable of functioning independently to collate or retrieve stored information* and to produce the requested document. (Emphasis added).

As the department would be required to manually tally review individual records to tally the number of requests made for each disclosure log document, I am satisfied that section 17 of the FOI Act does not apply to your request. This is because the department cannot produce a written document in discrete form by the use of a computer that is capable of functioning independently to collate the information you requested.



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.