



6 May 2019

Our reference: LEX 43631

Ms Alissa Patrick

Only by email: foi+request-5357-666575c3@righttoknow.org.au

Dear Ms Patrick

Decision – Freedom of Information Request (FOI)

I refer to your revised request, received by the Department of Human Services (**department**) on 17 April 2019, for access to documents under the *Freedom of Information Act 1982 (FOI Act)*. You requested access to:

'Please provide all AEFI [Adverse Events Following Immunisation] reported to AEMS [Adverse Event Management System] but not transferred to DAEN [Database of Adverse Event Notifications] within the past 5 years.'

My decision

I have decided to **refuse access** to your request for documents under section 24A of the FOI Act. The documents you have requested do not exist within the department's possession.

I am satisfied that all reasonable steps have been taken to find the requested documents within the department and that the documents do not exist with the department's possession.

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

Further information

I have been informed that the Adverse Event Management System and the Database of Adverse Event Notifications is maintained by the Therapeutic Goods Administration (TGA). The TGA is part of the Department of Health. Accordingly, it is open to you lodge an FOI request directly with the Department of Health by contacting: foi@health.gov.au

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

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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

Your request

On 6 April 2019, you made a request for access to documents under the FOI Act:

'Can I please have a copy of:

- *Any complaints/feedback/correspondence to the department from licensed medical professionals regarding the short and long term health outcomes of their patients in regards to immunisation and the removal of vaccine exemptions*
- *Any correspondence to the department in relation to licensed medical professionals having their ability to write valid vaccine exemptions removed*
- *Any internal discussion in relation to the above*

To assist the Department, I specifically exclude:

- *Duplicates of documents (I only require 1 copy of each document)*

Where possible, I would prefer that this information is provided in it's original format - that is to say, either in Microsoft Word or HTML (where received online or via email). I ask that you do not use PDFs wherever possible as it makes it difficult to read the information.

Please deal with this request informally or in accordance with your Administrative Access scheme if practicable. If this isn't practical, please consider it a formal application under the Freedom of Information Act.'

On 15 April 2019 the department informally consulted with you via email to clarify your request. You were invited to revise your request.

On 17 April 2019 you revised your request to:

'Please provide all AEFI reported to AEMS but not transferred to DAEN within the past 5 years.'

What I took into account

In reaching my decision I took into account:

- your original request dated 6 April 2019;
- your revised request dated 17 April 2019;
- consultations with departmental officers about:
 - the nature of the requested 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

Sub-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 searching for the requested documents, the department's Health and Aged Care Programmes Division was consulted because responsibilities relating to the Australian Immunisation Register sit within that Division.

As a result of this consultation, I was advised that adverse vaccination events are not recorded on the Australian Immunisation Register. Further, and as noted above, I was advised that the Adverse Event Management System and the Database of Adverse Event Notifications is maintained by the TGA. Accordingly, no documents falling within the scope of your request were found within the department's possession.

In light of the above, I am satisfied that all reasonable steps have been taken to find the requested documents within the department and that the documents do not exist within the department's possession.

Section 16 of the FOI Act – Transfer of requests

Sub-section 16 of the FOI Act provides that:

- (1) Where a request is made to an agency for access to a document and:
 - (a) the document is not in the possession of that agency but is, to the knowledge of that agency, in the possession of another agency; or
 - (b) the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made;the agency to which the request is made may, with the agreement of the other agency, transfer the request to the other agency.

I have not transferred your request to the Department of Health.

Regrettably, I was unable to have your request transferred because of the processing time that remained.

As noted above, you can lodge an FOI request directly with the Department of Health.

Conclusion

I have decided to **refuse access** to your request for documents under section 24A of the FOI Act, because the documents you have requested do not exist within the department's possession.



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.