



31 October 2019

Our reference: LEX 48034

Ms RK Crosby
Right to Know

By email: foi+request-5571-c7ffb8ac@righttoknow.org.au

Dear Ms Crosby

Decision on your Internal Review Request

I refer to email correspondence dated and received by the Department of Human Services (**the department**) on 1 October 2019, in which you requested an internal review of the department's decision delivered to you on 24 September 2019 (LEX 46629).

Internal Review Decision

I am authorised to make decisions under section 23(1) of the *Freedom of Information Act 1982* (the **FOI Act**), including internal review decisions under section 54C of the FOI Act. Consistent with the requirements of section 54C(2) of the FOI Act, I have made a fresh decision in relation to LEX 46629.

I have affirmed the original decision in LEX 46629 and decided to grant access to one document.

I have also decided to refuse access to part of your request on the basis that documents cannot be located or do not exist under section 24A 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 still disagree with any part of the decision you can ask for 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 further review.

Further assistance

If you have any questions please email FOI.Legal.Team@humanservices.gov.au.

Yours sincerely

Kate
Authorised FOI Decision Maker
Freedom of Information Team
Employment Law and Freedom of Information Branch | Legal Services Division
Department of Human Services



SCHEDULE OF DOCUMENTS FOR RELEASE
RIGHT TO KNOW – RK Crosby - LEX 48055

Doc No.	Pages	Date	Description	Decision	Comments
1.	1	Accessed	Number of Disability Support Pensioners with Migraine provided as at least one of medical conditions that was accessed and the percentage of Disability Support Pensioners who have migraine listed as a medical condition.	Released in full	



REASONS FOR DECISION

Original Decision

On 10 August 2019, the department received your original request for the following documents:

'I would like to know how many people disabled by migraine are currently in receipt of Disability Support Pension.

Please provide any document or documents that detail the number of people with Migraine listed as their disability or illness, currently in receipt any Centrelink benefit, broken down by type of benefit. If the document can indicate the percentage of DSP or Centrelink clients affected by migraine, or if additional documents (such as the entire number of clients) can be provided in order that we can calculate percentages, that would also be very useful.

If such a document does not exist, please provide any document you have (if any) that indicates the prevalence of migraine among Centrelink clients.

Note I am only looking for numbers (in order to try and calculate fiscal impact of new migraine prevention drugs currently being blocked by PBAC), not the personal details of any Centrelink client.'

On 24 September 2019, the department provided you with one document addressing part of your original request in relation to "how many people disabled by migraine are currently in receipt of Disability Support Pension". In addition, the department refused part of your request relating to "any Centrelink benefit" under section 24A of the FOI Act. This was on the basis that all reasonable steps were taken to locate documents and they did not exist or could not be found.

On 1 October 2019 you requested an internal review of the original decision in the following terms:

'Thank you for the information about people with migraine on DSP, this is useful information. I appreciate that was the title of the request, but the wording of the request asked for any Centrelink benefit. We have a significant belief that people with migraine who would otherwise be entitled to DSP are on Newstart long term or other benefits, providing repeated medical certificates for years to obtain exemptions from participation requirements, because of the social stigma that migraine is 'just a headache'.

If you are unable to gather medical condition information for other benefits, that's fine, just let me know. (However, we are requesting a parliamentary inquiry into the burden of migraine, so you may need to deliver this information to the Minister or relevant Committee in the near future anyway.)'

What I took into account

In reaching my decision I took into account:

- your original request dated 10 August 2019, and your request for internal review dated 1 October 2019;
- the original decision dated 24 September 2019;
- the document that falls within the scope of your request;

- consultations with departmental officers about:
 - the nature of the information requested; and
 - 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 decision

I am authorised to make decisions under section 23(1) of the FOI Act, including internal review decisions under section 54C of the FOI Act.

I have decided to:

- affirm the original decision to provide access to one document which was created under section 17 of the FOI Act and addresses part of your request; and
- refuse the remainder of your request under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate documents and the documents cannot be found or do not exist.

My findings of fact and reasons for deciding that the exemption applies to those documents are discussed below.

Searches conducted

I note that the department created a document as part of the original decision to satisfy part of your original request relating to “how many people disabled by migraine are currently in receipt of Disability Support Pension”.

I am satisfied that all reasonable searches have been conducted in this matter to find documents within the scope of the remainder of your request (discussed below).

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.

The Multicultural and Rural Programmes Branch and the Social Economic Participation Division (the **Division**) conducted fresh searches of the department's online records and did not identify any documents matching the portion of your request in which you referred to:

- ‘any document or documents that detail the number of people with Migraine listed as their disability or illness, currently in receipt any Centrelink benefit, broken down by type of benefit.’

I undertook further consultations with these areas and was informed that, after review of file notes, scanned documents and emails the following further information applies.

The Department does not hold information in relation to 'all Centrelink Payments' and migraines.

Whilst a recipient on Newstart Allowance or Youth Allowance may receive a temporary incapacity exemption from their Mutual Obligation Requirements due to a migraine (subject to all requirements being met), the Department does not have data to this level. This information could only be gained via:

- manual investigation of customer records, which would involve an unfeasible level of resource commitment; or
- the development of a new data file which would come at some cost. The accuracy of that data would be questionable as Service Officers may only record the primary condition when granting temporary incapacity exemptions.

I note also that the original decision-maker, in refusing the part of your request in relation to "documents that detail the number of people with Migraine listed as their disability or illness, currently in receipt any Centrelink benefit, broken down by type of benefit", addressed the portion of your request by stating as follows:

It is possible that a person on a payment other than the Disability Support Pension (**DSP**) may have provided migraine as a condition, and this may be recorded on their customer record. One example of this is having migraine included as a condition recorded in a medical certificate provided as part of the Mutual Obligation Requirements for people receiving Newstart Allowance or Youth Allowance, and some people receiving Parenting Payment and Special Benefit. This information is not recorded in a form that would allow for the data to be extracted and for a document to be readily created in a discrete form (i.e. like the data for DSP provided in the document for release). I am satisfied that it is not practical for the department to create a document that would list the number of people with a specific medical illness divided by Centrelink payment type. There is also no existing document that contains that information.

On the basis of the searches conducted and the reasons provided 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 do not exist or cannot be located.

Conclusion

In summary, I am satisfied that the document created under section 17 of the FOI Act satisfies part of your request relating to how many people disabled by migraine are currently in receipt of Disability Support Pension.

I have also refused part of your request for access, to the extent that it relates to "documents that detail the number of people with Migraine listed as their disability or illness, currently in receipt any Centrelink benefit, broken down by type of benefit" under section 24A of the FOI. I am satisfied that all reasonable steps have been taken to locate the requested documents and they cannot be found or do not exist.

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.

Applying for external review by the Australian Information Commissioner

If you do not agree with the internal review decision, you can ask the Australian Information Commissioner to review the 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.