



28 November 2019

Our reference: LEX 48556

Ms Julie Middleton

Only by email: foi+request-5750-475bbeb3@righttoknow.org.au

Dear Ms Middleton,

Decision on your Freedom of Information Request

I refer to your request, dated 21 October 2019 and received by the Department of Human Services (**department**) on the same date, for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

1. 'Annual revenue totals from 1992 to 2018 (both inclusive) received as a consequence of the statutory refunds in relation to the Social Security Act 1991 (Cth).
2. To determine statistics for each state and territory, reconcile with the figures in point 1 and provide:
 - a) the annual totals of revenue received from law firms for each separate state and territory;
 - b) the number of transactions that make up the totals in 2 (a). This will identify if there are fewer claims in specific states. Reporting in relation to the MODC forms would assist.
3. The annual revenue totals from 1996 to 2018 received as a consequence of the statutory refunds in relation to the Health and Other Services (Compensation) Act 1995 (Cth).
4. From the figures provided in point 3, the annual totals for the revenue received from law firms in the separate states and territories. These figures will show the recovery rates per state and territory.
5. The annual figures in relation to points 1/2 and 3/4 that have been paid directly from insurers or their claims' managers.'



My decision

I have decided to **refuse access** to your request under section 24A(1)(b)(ii) of the FOI Act on the basis that all reasonable steps have been taken to find the documents that you have requested and I am satisfied that they do not exist.

I am further satisfied that section 17 of the FOI Act does not apply because the department cannot produce documents, by the ordinary use of a computer, that would satisfy your request.

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

Processing charge

On 12 November 2019, the department notified you of a preliminary processing charge of \$60.00. This charge was based on an estimate calculated in accordance with section 9 of the *Freedom of Information (Charges) Regulations 2019 (Charges Regulations)*

On 20 November 2019, you emailed the department to advise that a money order in the amount of \$60.00 had been sent to the department on 13 November 2019. The money order was received by the department on 20 November 2019.

During the processing of your request, it became apparent that the documents that you requested did not exist and could not be produced by the department through ordinary use of a computer system. As such, the charge payable has been adjusted to nil in accordance with section 10 of the Charges Regulations.

The department will refund the \$60.00 preliminary charge that you paid. Please directly email FOI.LEGAL.TEAM@humanservices.gov.au and advise which of the following you would prefer:

- for the money order to be returned to you by express post. In this case, please provide your postal address; OR
- for the money to be returned to you by direct deposit into your bank account. In this case, please provide the account name, BSB, and account number of your preferred bank account, as well as your street address. Please note that this option may take longer than returning the money order directly to you.

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 regarding your freedom of information request please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely,

Riley

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

1. 'Annual revenue totals from 1992 to 2018 (both inclusive) received as a consequence of the statutory refunds in relation to the Social Security Act 1991 (Cth).
2. To determine statistics for each state and territory, reconcile with the figures in point 1 and provide:
 - a) the annual totals of revenue received from law firms for each separate state and territory;
 - b) the number of transactions that make up the totals in 2 (a). This will identify if there are fewer claims in specific states. Reporting in relation to the MODC forms would assist.
3. The annual revenue totals from 1996 to 2018 received as a consequence of the statutory refunds in relation to the Health and Other Services (Compensation) Act 1995 (Cth).
4. From the figures provided in point 3, the annual totals for the revenue received from law firms in the separate states and territories. These figures will show the recovery rates per state and territory.
5. The annual figures in relation to points 1/2 and 3/4 that have been paid directly from insurers or their claims' managers.'

What I took into account

In reaching my decision I took into account:

- your original request, dated 21 October 2019;
- other correspondence with you;
- 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 (**Guidelines**); and
- the FOI Act.

Reasons for my decision

I am authorised to make decisions under subsection 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.



Part 1 of your request

In relation to part 1 of your request, the Debt Management Branch, which is the area of the department responsible for compensation recovery under the *Social Security Act 1991*, undertook searches of its paper and electronic files. This Branch advised that it does not hold documents setting out the annual total compensation recovered under the *Social Security Act 1991*.

Parts 2(a) and (b) of your request

As detailed above regarding part 1 of your request, the department does not hold documents with annual totals of compensation recovered under the *Social Security Act 1991* from 1992 to 2018. I am further advised by the Debt Management Branch that the department does not recover compensation charge amounts from law firms. Rather, compensation money is typically recovered from an insurer or other compensation payer, or from the individual Centrelink. As such, the department also does not hold documents relevant to part 2(b) of your request, regarding the number of transactions in which compensation was recovered from law firms.

Part 3

Regarding part 3 of your request, the Medicare and Veterans Health Branch, which is the area of the department responsible for compensation recovery under the *Health and Other Services (Compensation) Act 1995*, conducted searches of its files. This Branch advised that it was unable to locate a document setting out the annual total compensation recovered under the *Health and Other Services (Compensation) Act 1995* from 1996 to 2018. This Branch advised that annual total compensation recovered for each year is publicly available in the annual reports of the Health Insurance Commission or the Department of Health (for financial year 1996/97 to 2004/05), Medicare Australia (for 2005/06 to 2010/11), or the Department of Human Services (for 2011/12 onwards).

For your assistance, please find the department's annual reports since 2011/12 on our website at: humanservices.gov.au/organisations/about-us/annual-reports, and previous Medicare Australia and Health Insurance Commission annual reports at: humanservices.gov.au/organisations/about-us/annual-reports/annual-report-archive.

Archived annual reports may also be available through the National Library of Australia, including through their website at nla.gov.au.

Part 4

As detailed above regarding part 3 of your request, the department does not hold any documents with annual totals of compensation recovered under the *Health and Other Services (Compensation) Act 1995*, including any documents showing the annual totals broken down by whether they were received from a law firm.

Part 5

As detailed above, the department does not hold any documents detailing annual totals of compensation recovered under the *Social Security Act 1991* or the *Health and Other Services (Compensation) Act 1995*, including any documents breaking down these figures by the party from which compensation was recovered.

On the basis of these searches, I am satisfied that in accordance with section 24A(1)(b)(ii) of the FOI Act:

1. all reasonable steps have been taken to find the documents; and
2. the documents do not exist.



Section 17 of the FOI Act

Section 17 of the FOI Act relevantly provides:

(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 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(1) of the FOI Act apply?

The Debt Management Branch and Data Analytics Innovation Branch each advised that the department holds some data relevant to part 1 of your request in its Enterprise Data Warehouse.

Pursuant to subsection 17(1) of the FOI Act, I considered whether the department could produce a written document relevant to part 1 of your request by the use of a computer or other equipment that is ordinarily available to the department for retrieving or collating stored information.

I made further enquiries with the department's Data Analytics Innovation Branch, which is the area of the department responsible for extracting data and producing reports from the department's Enterprise Data Warehouse. This Branch advised that Centrelink compensation recovery data has been stored in the Enterprise Data Warehouse since mid-2015. The Data Analytics Innovation Branch further advised that the department is currently only able to extract a monthly report of Centrelink compensation recovery data from this database, and that it would not be possible to extract annual figures through the ordinary use of the existing computer program used to do this.



The Data Analytics Innovation Branch advised that extracting annual figures would require the department to produce a new computer program, or for the department to manually collate monthly figures and produce a new document. The Data Analytics Innovation Branch further advised that, even if the department were to create a new computer program to satisfy your request, it would not be able to provide annual figures prior to financial year 2015/16.

The Guidelines at paragraph 2.33 provide:

The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

In *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67, the Full Federal Court considered the application of section 17 of the FOI Act and found, at paragraph 51:

'...the need for a new computer program to enable the computer ordinarily available to the agency for retrieving or collating stored material to produce the requested document is a fact capable of meaning that the agency cannot, by the use of a computer ordinarily available, produce the requested document.'

Accordingly, I am satisfied that a document cannot be created by the use of a computer that is 'ordinarily available' to the agency for retrieving or collating stored information and, as such, I am satisfied that section 17(1) of the FOI Act does not apply to your request.



Attachment B

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a freedom of information 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 a freedom of information 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 (**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.