



16 December 2019

Our reference: LEX 49360

Right to Know

Only by email: foi+request-5944-4a771430@righttoknow.org.au

Dear Right to Know

Your Freedom of Information (FOI) request – Consultation

I refer to your request, dated 24 November 2019, and received by the Department of Human Services (**department**) on the same date, for access to documents under the *Freedom of Information Act 1982 (FOI Act)*, made in the following terms:

‘Legal advice after July 2019 about robodebt.’

This is a notice of an intention to refuse access to the documents you have requested because a ‘practical refusal reason’ exists under section 24(1) of the FOI Act. I am issuing this notice under section 24AB(2) of the FOI Act.

Consultation – your request gives rise to a practical refusal reason

Pursuant to the FOI Act, I am consulting with you to ask that you revise your request because processing it would substantially and unreasonably divert the resources of the department from its other operations (section 24AA(1)(a)(i)).

I am consulting with you to ask that you consider revising your request to address this.

Section 24(1) of the FOI Act provides that the department may refuse to give access to documents in accordance with an FOI request if:

- a practical refusal reason exists in relation to the request; and
- following a consultation process (under section 24AB of the FOI Act), the department is satisfied that the practical refusal reason still exists.

If you do not revise your FOI request in order to resolve the issues raised in this letter, I may have to refuse your request on the basis that a practical refusal reason still exists.

For a more detailed explanation, see **Attachment A**.



How to send a revised request

Within 14 days after you are provided this notice, 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 written response must be received by the department before the consultation period ends on **30 December 2019**.

If no response is received by that date, your request will be taken to have been withdrawn, pursuant to the operation of the FOI Act.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.

Extension of time

Due to the department's reduced activity period over December and January, I seek your permission to extend the processing time of your request by an extra 15 days.

Please advise in your response to this letter if you agree to this extension of time. If you respond to this consultation revising your request, or refusing to revise your request, and do not respond to this request for an extension of time, the department may seek an extension from the Office of the Australian Information Commissioner.

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 49360**.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely

Kaitlin

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

**ATTACHMENT A****What I took into account**

Processing your request would substantially and unreasonably divert the resources of the department from its other operations because of the search and retrieval effort required to satisfy the scope of your request.

Why your request is substantial

Your request seeks access to any legal advice prepared after July 2019 about 'robodebt'. I understand that your use of 'robodebt' refers to the Online Compliance Intervention (OCI) program which was introduced as part of the 2015-16 budget measures. Broadly speaking, the OCI program matches a customer's Australian Taxation Office (ATO) Pay-As-You-Go income data with their Centrelink records and, where a discrepancy in income data is identified, a compliance process is initiated which may result in an overpayment being identified and a debt being owed to the Commonwealth.

In order for the department to discharge its obligations under the FOI Act to conduct all reasonable searches for the documents falling within the scope of your request, at a minimum, the department would be required to search the records of each customer who has had a compliance process initiated following the identification of a discrepancy in income data. Manual searches would be required to confirm whether or not a matter contained legal advice about the program.

In addition, the department would need to conduct searches with the Legal Services Division who are responsible for managing Administrative Appeals Tribunal litigation and for providing internal legal advice on the application of Centrelink legislation. Manual searches would need to be conducted on the litigation records of each OCI matter to confirm whether any legal advice had been provided. Further, each Branch within the division would need to conduct searches to confirm whether or not they have provided any legal advice on the OCI program between 1 August 2019 and the date of your request.

Noting the scale of the OCI program, I am satisfied that processing your request is substantial. Following initial enquiries with a single business area, I estimate that it would take approximately 15 hours to search for and retrieve the documents falling within the scope of your request. I note, this is a highly conservative estimate of the total time taken to process your request as it does not include any time to search and retrieve documents from individual OCI customer files, documents from individual AAT files, undertake any necessary third party consultation, or process the documents following their retrieval.

Therefore, I am satisfied that your request is substantial.

Why your request is unreasonable

For the purpose of providing this notice, I have considered whether processing your request would be unreasonable. I consider that processing your request, as it currently stands, would be unreasonable for the following reasons:

- a high number of staff would be required to be diverted from their ordinary duties, meaning that their ability to provide important services to the general public would be significantly diminished;



- as each advice turns on the specific factual matrix of that matter, there is no public interest value in the disclosure of legal advices relating to the application of the OCI program to a customer; and
- it is likely that a narrowed scope could satisfactorily meet your legitimate interest in seeking access to documents concerning 'legal advice'.

As a consequence, I am presently satisfied that processing your request would substantially and unreasonably divert the resources of the department from delivering other services to the public, including the processing of other FOI requests. I am satisfied that a practical refusal reason exists.

Revising your request

To enable the department to reasonably search for the documents you seek, you may wish to consider the following:

- if you are seeking access to a legal advice prepared by the department for an OCI debt raised against yourself, request that specific legal advice;
- if you are seeking access to a legal advice prepared by the department for an OCI debt raised against a specific individual other than yourself, request that specific legal advice;
- limiting your request to a particular area of the department, for example, by only requesting legal advices provided by the Legal Services Division to the Secretary of the department; or
- providing further information about the types of legal advices you are seeking to access.

Please note that, even if you do provide a revised scope, a practical refusal reason may remain if the revised scope is still too large to be processed. You will need to take this into consideration when revising the scope of your request.

Relevant sections of the *Freedom of Information Act 1982*

Section 24(1) of the FOI Act provides that an agency may refuse to give access to documents in accordance with an FOI request if:

- a practical refusal reason exists in relation to the request; and
- following a request consultation process under section 24AB of the FOI Act, the agency is satisfied that the practical refusal reason still exists.

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to an FOI request if the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.

Section 24AA(2) of the FOI Act sets out certain factors which the department must consider when determining whether a practical refusal reason exists. The department must specifically have regard to the resources that would have to be used for:

- identifying, locating or collating the documents within the department's filing system;



- deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for examining the document or consulting in relation to the request;
- making a copy, or an edited copy, of the document;
- notifying any interim or final decision on the request.

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

- 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 at the end of the consultation period if:

- the applicant does not consult the contact person during the consultation period in accordance with the section 24AB notice; or
- the applicant does not do one of the things mentioned in section 24AB(6) before the end of the consultation period.