



6 February 2020

Our reference: LEX 50190

Ms Julie Middleton

Only by email: [foi+request-6036-35e55618@righttoknow.org.au](mailto:foi+request-6036-35e55618@righttoknow.org.au)

Dear Ms Middleton

### **Decision on your Freedom of Information Request**

I refer to your request dated 23 December 2019, and received by Department of Human Services, now known as **Services Australia**, on the same day, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following documents:

'1. The annual number - from 1992 to 2018 - of client MOD C forms provided to the Department to be reported by State or Territory. The Department's Compensation Management System ought to have this information and the date could be when the new client record was created or the MOD C form signed or similar date. The address fields would have the State or Territory.

The Centrelink Compensation and Damages form (MOD C) needs to be completed in the event that an applicant or their partner is entitled to receive compensation. This form is part of the claim for payment documentation to be provided to Centrelink when individuals apply for income support.

2. The annual number - from 1992 to 2018 - of finalised compensation records to be reported by State or Territory. This is where an insurer or law firm has paid the amount requested by the Department and the client's obligation has been finalised.

3. The annual number - from 1992 to 2018 - for all outstanding compensation recovery records to be reported by State or Territory. This is where clients have not yet had any compensation recovery payments made to the Department.

4. Any Fact Sheets or similar documents that are provided to law firms to explain how the compensation recovery calculations are made.'

To allow for Services Australia's reduced activity period over December and January, the due date for Services Australia to provide you with a decision on your FOI request was extended to 6 February 2020.

### **My decision**

I have decided to refuse your request for access under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents you have requested and I am satisfied that they do not exist. I am also satisfied that section 17 of the FOI Act does not apply in that Services Australia cannot produce a document to satisfy these parts of your request by the ordinary use of a computer. 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 Services Australia, 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**

Whilst Services Australia does not have any documents matching part 4 of your request, it may assist you to review the following webpage as it provides general information for lawyers and insurers when dealing with compensation matters:

<https://www.servicesaustralia.gov.au/organisations/business/services/centrelink/centrelink-compensation-information-lawyers-and-insurers>

If you have any FOI questions please email [FOI.Legal.Team@servicesaustralia.gov.au](mailto:FOI.Legal.Team@servicesaustralia.gov.au).

Yours sincerely

### **Elsa**

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



Attachment A

## REASONS FOR DECISION

### What you requested

'1. The annual number - from 1992 to 2018 - of client MOD C forms provided to the Department to be reported by State or Territory. The Department's Compensation Management System ought to have this information and the date could be when the new client record was created or the MOD C form signed or similar date. The address fields would have the State or Territory.

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4. Any Fact Sheets or similar documents that are provided to law firms to explain how the compensation recovery calculations are made.'

### What I took into account

In reaching my decision I took into account:

- your request dated 23 December 2019;
- documents that would fall within the scope of your request;
- consultations with Services Australia officers about:
  - the nature of the documents, should they exist;
  - Services Australia'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.

The Debt Management Branch is the relevant subject matter expert for your request (**Branch**). The Branch conducted searches of Services Australia's databases, as well as consulting with the Chief Data Officer Division of Services Australia. The Branch did not identify any documents that were relevant to parts 1-3 of your request as Services Australia has not previously reported on the data you sought.

The Branch further advised that Services Australia does not provide fact sheets or similar documents to law firms to explain how compensation recovery calculations are made, and therefore, no documents exist for part 4 of your request.

On the basis of these searches, 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.

### Section 17 of the FOI Act

As your request captures information of the type that usually involves the use of a computer system and database (data/statistics request), I have considered whether section 17 of the FOI Act applies. 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;
- (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?*

Pursuant to section 17(1) of the FOI Act, I considered whether Services Australia could produce a written document which would demonstrate the information you have requested in a discrete form, by the use of a computer or other equipment that is ordinarily available to Services Australia for retrieving or collating stored information.

I consulted with the Branch about the possibility of creating such a report. Upon consultation, I was advised that Services Australia has never reported on the requested data. Therefore in order to obtain a document that would satisfy the request, the Branch would need to develop discrete code and/or programme to generate the data requested.

The FOI Guidelines at 2.33 provides:

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 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 Services Australia 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.



## 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 a 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 Services Australia; 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 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 Services Australia 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](http://www.oaic.gov.au)

Post: Australian Information Commissioner



GPO Box 5218  
SYDNEY NSW 2001

Email: [enquiries@oaic.gov.au](mailto: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](http://www.oaic.gov.au).
- If you have one, you should include with your application a copy of Services Australia's decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to Services Australia'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](http://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](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.