



17 February 2020

Our reference: LEX 50220

Ms Julie Middleton

By email only: foi+request-6051-7f43de31@righttoknow.org.au

Dear Ms Middleton,

Decision on your Freedom of Information Request

I refer to your request dated 1 January 2020 and received by Services Australia (formerly the Department of Human Services) on the same day for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following documents:

- '1. The annual number of Newstart recipients from 2007 with an assessed work capacity of under 30 hours per week, who have been sent for an independent medical assessment. That is, a Disability Medical Assessment, with Sonic HealthPlus or other service provider.
2. Statistics for the annual number of Newstart recipients from 2007, who have been assessed under the Centrelink Impairment Tables as having a:
 - a) mild impact (5 points)
 - b) moderate impact (10 points)
 - c) severe impact (20 points); or
 - d) extreme (30 points) impact

The figures of the above, will reconcile with the annual totals in point 1.

3. The annual number of Newstart recipients from 2007, who have been assessed as having 20 or more points from the Impairment Table, who:
 - a) have been actively participating in a Program of Support (POS); and
 - b) have a Mutual Obligation Requirement to attend compulsory appointments with Centrelink every 12 weeks. This would be an exemption from being in the POS'.

My decision

I have decided to refuse your request for access under section 24A(1)(b)(ii) 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 any part of your request by the use of a computer that

is ordinarily available to Services Australia for retrieving or collating stored information. 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

If you have any FOI questions please email 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 of Newstart recipients from 2007 with an assessed work capacity of under 30 hours per week, who have been sent for an independent medical assessment. That is, a Disability Medical Assessment, with Sonic HealthPlus or other service provider.

2. Statistics for the annual number of Newstart recipients from 2007, who have been assessed under the Centrelink Impairment Tables as having a:

- a) mild impact (5 points)
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3. The annual number of Newstart recipients from 2007, who have been assessed as having 20 or more points from the Impairment Table, who:

- a) have been actively participating in a Program of Support (POS); and
- b) have a Mutual Obligation Requirement to attend compulsory appointments with Centrelink every 12 weeks. This would be an exemption from being in the POS'.

What I took into account

In reaching my decision I took into account:

- your request dated 1 January 2020;
- documents that would fall within the scope of your request;
- other correspondence with you;
- consultations with Services Australia officers about:
 - the nature of the documents;
 - 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 Programme Management & Assurance Branch (**Branch**) is the relevant subject matter expert for your request. The Branch is responsible for:

- the delivery of a systematic, disciplined approach to the management of programmes in the Division - from inception to delivery; and
- collaborating to build strategic partnerships and supporting capability development to create high performance teams.

The Branch conducted searches of Services Australia's electronic and paper files and did not identify any documents that were relevant to your request. I was advised that Services Australia does not report on the statistics requested.

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;

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 3.204 of the Guidelines provides:

Section 17 requires an agency to produce a written document of information that is stored electronically and not in discrete written form... The obligation to produce a written document arises if:

- The agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information...

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 the department for retrieving or collating stored information.

To address this, I consulted with the Branch about the possibility of creating such a report. Upon consultation, I was advised that Services Australia does not have any ordinarily available computer program that is capable of creating a document containing the information you have requested without extensive manual manipulation. In order to obtain the information you have requested, the Branch would need to raise a new SAS extract request that would output raw data which would then need to be manually compiled and presented in a user-friendly format. This process would take multiple months to complete.

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:

Section 17(1)(c)(i) is directed at ensuring that an agency will not be obliged to produce a document unless the effective and comprehensive means of doing so are ordinarily available to it for the specified purpose. In that context, the computer or other equipment ordinarily available for the specified purpose must be capable of functioning independently to collate or retrieve stored information and to produce the requested document.'

'...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 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 (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 Services Australia 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 agency 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 Services Australia decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the agency'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.