



9 April 2020

Our reference: LEX 53336

Mr Anatoly Kern (Right to Know)

Only by email: [foi+request-6176-1eb37892@righttoknow.org.au](mailto:foi+request-6176-1eb37892@righttoknow.org.au)

Dear Mr Kern

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

I refer to your request, dated 5 March 2020, and received by Services Australia (formerly known as the Department of Human Services) on the same date, for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

'I am aware that Child Support department records separately critical incidents. I am looking for the documents related to these records.'

#### **My decision**

I have decided to refuse your request under section 24(1) of the FOI Act because a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied under section 24AA(1)(b) that your request does not provide sufficient information to enable Services Australia to identify the documents you are seeking, as required by section 15(2)(b) 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 disagree with 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 questions please email [FOI.LEGAL.TEAM@servicesaustralia.gov.au](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au).

Yours sincerely

#### **Colette**

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



## REASONS FOR DECISION

### What you requested

'I am aware that Child Support department records separately critical incidents. I am looking for the documents related to these records.'

### What I took into account

In reaching my decision I took into account:

- your original request dated 5 March 2020;
- other correspondence with you on 18 March 2020, 19 March 2020 and 23 March 2020;
- consultations with Services Australia officers about:
  - the nature of the requested documents; and
  - Services Australia's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the FOI Act.

### Request consultation process

On 18 March 2020, I wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act as your request did not clearly identify the documents you were seeking access to. Due to a lack of clarity Services Australia suggested that you:

- clarify what the term 'critical incidents' is referring to in the context of this request (for example, by confirming the specific type of critical event you are requesting documents for);
- confirm whether you are seeking documents of 'critical incidents' generally, or just documents which were created in relation to a 'critical incident' involving yourself;
- specify the types of documents you are requesting, for example reports on individual 'critical incidents', policy documents on 'critical incidents' generally or documents notifying Child Support of a 'critical incident'; and
- limit the date range of your request.

The section 24AB consultation notice gave you an opportunity to consult with Services Australia to revise your request so as to remove the practical refusal reason.

On 19 March 2020, you responded to the section 24AB consultation notice, however your response did not provide sufficient information to enable Services Australia to identify the documents you are seeking

On 23 March 2020, Services Australia wrote to you informally seeking clarification from you regarding the scope of our request. On the same day, you responded to the informal

consultation. Unfortunately your response did not provide sufficient clarification of your request to enable Services Australia to identify the documents you are seeking.

### **Reasons for my decisions**

I am authorised to make decisions under section 23(1) of the FOI Act.

Following the request consultation process undertaken in accordance with section 24AB of the FOI Act, I am satisfied that a practical refusal reason still exists in that you have not provided sufficient information to identify the requested documents. The reasons for my decision are outlined below.

#### *Practical refusal reason*

Section 24AA of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the request does not satisfy the requirement in section 15(2)(b) of the FOI Act (identification of documents).

Section 15(2)(b) of the FOI Act provides that a valid FOI request must:

'provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it'.

#### *Why your request does not satisfy the requirement in section 15(2)(b)*

Services Australia has refused your request under section 24 of the FOI Act on the basis that the request is still unclear following consultation. Your clarification that the term 'critical incidents' in the context of your request refers to the death of child support payers does not assist Services Australia to sufficiently identify the documents you are seeking.

Child Support records the date of death for active cases (parents with an ongoing liability) and ended cases with outstanding child support payable (such as paying parents with an outstanding child support debt) on each customer's individual Child Support record. This information is not otherwise separately recorded by Services Australia.'

The phrase 'documents related to these records' is ambiguous and it is unclear whether the documents you are seeking relate to the entire file of an individual deceased child support customer, operational documents relating to how Services Australia records the death on a deceased customer's record, or documents notifying Child Support of the death of the death of a child support customer.

#### *Conclusion*

In summary, I am satisfied that your request does not satisfy the requirement in section 15(2)(b) of the FOI Act, in that it does not provide sufficient information to enable Services Australia to identify the documents you are seeking.

I have found that a practical refusal reason exists in relation to your request for access to the documents. Accordingly I have decided to refuse your request under section 24(1) of the FOI Act.



**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 an 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 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 the Services Australia 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.