



27 July 2020

Our reference: LEX 56047

Mr John Smith

Only by email: foi+request-6433-dc4438ac@righttoknow.org.au

Dear Mr Smith

Decision on your Freedom of Information Request

I refer to your request dated 26 June 2020, and received by Services Australia on the same day, for access under the *Freedom of Information Act 1982* (Cth) (the **FOI Act**) to the following documents:

'I seek the following information:

- The number of recipients of jobseeker or austudy payments that claim rent assistance
- The number of recipients of jobseeker or austudy payments that don't claim rent assistance
- The average monthly rent that is declared by people who claim jobseeker payments, when they are declaring their average rent for the purpose of obtaining rent assistance
- The average monthly rent that is declared by people who claim austudy payments, when they are declaring their average rent for the purpose of obtaining rent assistance.'

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. 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 with statistical information

The JobSeeker, Rent and Concessions Branch (the **Branch**), being the Branch within Services Australia with programme responsibility for the JobSeeker payment, advised me that the Department of Social Services publicly released data which, whilst outside the scope of your request, may assist you. It is called the 'DSS Payment Demographic Data', and is available at:

<https://data.gov.au/dataset/ds-dga-cff2ae8a-55e4-47db-a66d-e177fe0ac6a0/details?q=dss>.

The Branch advised me that this resource shows point-in-time data of the number of customers receiving Rent Assistance. This includes the 'average' and 'median' fortnightly rent paid by Rent Assistance recipients, separated by payment type. However, due to the date of release it does not include JobSeeker data.

As your request is for statistical information, you may wish to submit a request to Services Australia's statistics team to see if they can create a bespoke data set that might be relevant to your needs. You can contact the team by email at:

cdod.service.gateway@servicesaustralia.gov.au.

Alternatively, you can contact them via post at the following address:

Service Gateway Data and Analytics Engagement Branch
Services Australia
PO Box 7788 Canberra BC
ACT 2610 Australia

More information about requesting statistical information can be found on our website using the link below:

<https://www.servicesaustralia.gov.au/organisations/about-us/statistical-information-and-data#contacts>.

Further assistance

If you have any questions, please email FOI.Legal.Team@servicesaustralia.gov.au.

Yours sincerely

Amy
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

'I seek the following information:

- The number of recipients of jobseeker or austudy payments that claim rent assistance
- The number of recipients of jobseeker or austudy payments that don't claim rent assistance
- The average monthly rent that is declared by people who claim jobseeker payments, when they are declaring their average rent for the purpose of obtaining rent assistance
- The average monthly rent that is declared by people who claim austudy payments, when they are declaring their average rent for the purpose of obtaining rent assistance.'

I note your correspondence of 24 July 2020, in which you provided the following clarification for your FOI request:

- '- The number of recipients of jobseeker or austudy payments that claim rent assistance
- The number of recipients of jobseeker or austudy payments that don't claim rent assistance

I am requesting the jobseeker numbers, and austudy numbers, separately.

Please do not aggregate the austudy and jobseeker numbers within my request.'

What I took into account

In reaching my decision I took into account:

- your original request dated 26 June 2020;
- your email of 24 July 2020;
- 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 Branch is responsible for managing and providing programme assurance for a number of programmes, including JobSeeker and Rent Assistance payments. The Branch conducted searches of Services Australia's records for the documents detailed in your request. Specifically, the Branch undertook searches of Services Australia's intranet, and in its information management tools (Cognos and SAS VA), which is where documents relevant to your request would ordinarily be located. The Branch did not identify any documents falling within the scope of your request.

The Branch advised that in relation to parts 1-2 of your request, Rent Assistance is not a payment that can be claimed. Rather, eligibility for Rent Assistance is determined when an individual lodges a claim for a payment with Centrelink. Therefore, there are no documents showing who has or has not claimed Rent Assistance.

I was also advised by the Branch that Services Australia does not report on the measures requested by you in parts 3-4 of your request, which is why no discrete documents falling within the scope of your request were located.

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

Section 17(1) of the FOI Act provides that:

- (1) Where:
 - (c) 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;
 - (d) 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
 - (e) 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.

Paragraph 3.204 of the FOI 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 of the FOI Act apply?

Pursuant to section 17 of the FOI Act, I considered whether Services Australia could produce a written document which would demonstrate the data you have requested in parts 3-4 of your request 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.

To address this, I consulted with the Branch about the possibility of creating such a document. They explained that they did not have any ordinarily available computer programs that were capable of creating the requested document without manual manipulation. In this regard, Services Australia would need to create a new computer program that was capable of extracting the requested data and compiling it into a discrete format.

The Full Court of the Federal Court affirmed the Federal Court decision in *Collection Point Pty Ltd v Commissioner of Taxation* [2012] FCA 720 (**Collection Point**), and found that section 17 does not import an obligation on agencies to undertake the extraordinary step of creating a computer program capable of creating a requested document.

The Full Federal Court held [at 44 and 52]:

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.

In *Collection Point*, the Full Federal Court held that the two conditions specified in section 17 are distinct and are to be applied sequentially. In this regard, I firstly had consideration to whether Services Australia could produce the requested document using a computer or other equipment that is ordinarily available to the Services Australia (section 17(1)).

The Branch has advised that, to the extent that relevant data is actually captured by Services Australia, producing a document satisfying the scope of your request would require the manual manipulation of data. Therefore, I am satisfied that Services Australia does not have a computer program or system that is ordinarily available to it that could produce the documents requested.

In applying the reasoning in *Collection Point*, I am satisfied that the document cannot be created by the use of a computer that is 'ordinarily available' to the agency for retrieving or collating stored information, and noting the sequential application of the section, I am therefore satisfied that section 17 does not apply to parts 3-4 of 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 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
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 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

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.