



Mr John Smith

Via email: *John Smith* <foi+request-6457-7916ce7f@righttoknow.org.au>

Dear Mr Smith,

Freedom of Information request – Internal Review Decision

I refer to your request, received by the Department of Agriculture, Water and the Environment (**department**) on 28 July 2020 for internal review of the department's decision under the *Freedom of Information Act 1982 (FOI Act)* dated 28 July 2020 (**Primary Decision**) for access to information regarding the number of non-APS staff working in roles that are substantially identical to other APS employees.

My decision

I have decided to affirm the Primary Decision as I am satisfied that all reasonable steps have been taken to locate the documents you have requested and I am satisfied that they do not exist. Furthermore, I am satisfied that the department does not collect relevant data on non-APS staff to undertake a detailed analysis to provide the requested data under section 17 of the FOI Act.

The reasons for my decision are set out in **Attachment A**.

You can ask for a review of my decision

You may apply directly to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Further assistance

If you have any questions, please email foi.environment@awe.gov.au.

Yours sincerely

Neal Mason
First Assistant Secretary
People Division

26 August 2020

REASONS FOR DECISION

Background summary and what you requested

You made an FOI request to the department on 3 July 2020 for the following:

'A document that contains the total number of non-APS staff, filling equivalent roles to actual APS staff in your department.

Typically these employees are ostensibly employed through labour hire agencies, and fulfil functionally equivalent roles to their colleagues.

If no such document exists please advise.'

On 10 July 2020, the department wrote to you providing you with the following data:

Non-APS staff	1,015
APS employees (including SES)	7,246

Notes on the data:

- Non-APS staff includes contractors, service providers and consultants that require access to the Department's building and IT systems. Data does not include contractors employed in the former Department of Environment and Energy. Figures are head count. Data includes staff working for Parks Australia

On 10 July 2020, you wrote back to the Department with the following information:

'I still would like to continue with my FOI request however; as the information you have generously provided under administrative [sic] release does not contain a key detail that I am interested in.

I would like to know how many of those 1,015 Non-APS staff; are working in roles that are substantially identical to other APS employees.

As an example to explain what I mean; at the Administrative Appeals Tribunal, there are APS employees that are employed as 'tribunal service officers'. However, there are also non-APS staff that while being employed as contractors; fulfil exactly the same tasks as their colleagues [sic], have the same job description, manager, etc (except they work under a non-APS contract).

I am hoping to find out how many working at your department are working under that specific type of arrangement.

For example; if a person was employed as a contractor cleaner, but there was no equivalent APS cleaner role at the organisation, then they would be excluded from that headcount.'

On 28 July 2020, the original decision maker decided to refuse your request for access to documents under section 24A of the FOI Act on the basis that all reasonable steps had been taken to locate the documents you requested and the decision maker was satisfied that they do not exist.

On 28 July 2020, you requested an internal review of the decision dated 10 July 2020.

What I took into account

In reaching my decision, I took into account:

- your original request dated 3 July 2020 and the additional information you provided on 10 July 2020;
- the original decision dated 28 July 2020;
- your internal review request dated 28 July 2020;
- information about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the FOI Act.

Reasons for my decision

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.

In accordance with section 24A of the FOI Act, I am still satisfied that all reasonable steps have been taken to find the documents and the documents do not exist.

On the basis of these searches, I am satisfied, in accordance with section 24A of the FOI Act, that all reasonable steps have been taken to find the documents and the documents do not exist.

Section 17 of the FOI Act

- (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.

I am satisfied that the department does not collect relevant data on non-APS staff to undertake a detailed analysis to provide the requested data under section 17 of the FOI Act. For the department to collect the relevant data you have sought, the department would need to independently review each contract and service agreement for over 1,000 individual contracts to determine the role the individual has been contracted to perform.

I am satisfied that the work involved in collecting this data and preparing a written document with the information sought would substantially and unreasonably divert the resources of the department from its other operations.