



**Australian Government**  
**Attorney-General's Department**

Our ref: FOI20/095; CM20/6301

29 July 2020

Mr John Smith  
By email: [foi+request-6459-853d3ba6@righttoknow.org.au](mailto:foi+request-6459-853d3ba6@righttoknow.org.au)

Dear Mr Smith

**Freedom of Information Request FOI20/095 – Decision Letter**

The purpose of this letter is to give you a decision about your request for access to documents which you submitted to the Attorney-General's Department (the department) under the *Freedom of Information Act 1982* (the FOI Act).

**Your Request**

On 3 July 2020, you requested access to:

*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 7 July 2020, the department acknowledged your request.

A decision in relation to your request is due on 3 August 2020.

**My Decision**

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

In making my decision, I have taken the following into account:

- the terms of your request,
- advice provided to me by officers with responsibility for matters to which your request relates,
- the provisions of the FOI Act,
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines), and
- the decision given by the Full Federal Court of Australia in the matter of *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67 (*Collection Point*).

Section 24A of the FOI Act relevantly provides that an agency or Minister may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document:

- is in the agency's possession but cannot be found; or

- does not exist.

When considering a decision to refuse access under s 24A of the FOI Act, the Guidelines relevantly provide at [3.89] that an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents,
- the current and past file management systems and the practice of destruction or removal of documents,
- the record management systems in place,
- the individuals within an agency or minister's office who may be able to assist with the location of documents, and
- the age of the documents.

Section 17 of the FOI Act relevantly provides that where 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 the agency could produce a written document containing the information in discrete form by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information, 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.

To identify the document for your request, I arranged for staff in the department's Business Operations Branch to conduct searches of Aurion, the departmental system used to maintain employee information, report on human resources information and maintain organisational structures for the department. However, the staff were unable to identify the information in the form you requested to access it.

In addition to the above, I sought advice from staff employed in the department's Human Resources Branch. The staff employed in the Human Resources Branch relevantly advised that it is not possible to use only data from Aurion to create a document containing the information you requested to access. This is because Aurion does not differentiate between people described as contractors who meet the definition of '*non-APS staff, filling equivalent roles to actual APS*' and those falling into another category. For example, consultants, auditors and security guards who are recorded on Aurion as 'contractors' for administrative purposes.

The staff employed in the Human Resources Branch further advised that it may be possible to produce the document you requested to access, but that this would require the examination of the circumstances of every person categorised as contractor in Aurion. In particular, it would require that every business area in the department examine Aurion data and advise if persons they engaged and registered as a 'contractor' in the system meet the definition of '*non-APS staff, filling equivalent roles to actual APS*'. Subject to responses received from various business areas, this would further require that a departmental officer amend Aurion data so that it could be produced into a discrete document containing only the information you requested to access.

To determine whether the department is required by section 17 of the FOI Act to undertake the steps above to produce the document you have requested to access, I have had regard to the matter of *Collection Point*. In that matter the Full Federal Court, relevantly, found that:

*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<sup>1</sup>.*

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<sup>1</sup> [2013] FCAFC 67 [44].

Having regard to the above, I am satisfied that the department is not be able to produce the document you have requested, using a computer or other equipment that is ordinarily available, and which is capable of functioning independently to collate or retrieve stored information and to produce the requested document. I am also satisfied that that the document does not exist within the department's records holdings. I have therefore decided to refuse access pursuant to section 24A of the FOI Act.

**Additional Information**

Please note you can read more about the department's employee profile in its annual reports, which are available at [www.ag.gov.au](http://www.ag.gov.au).

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

If you wish to discuss this decision, you can the FOI case officer for this matter, Sarah, who can be reached on (02) 6141 6666 or by email to [foi@ag.gov.au](mailto:foi@ag.gov.au).

Yours sincerely



**Antony Catt**  
Director  
Freedom of Information and Privacy Section

**Attachments**

Attachment A: Review Rights