



Australian Government

Department of Health

Department Reference: FOI 1811

John Smith

via email: foi+request-6460-07c6cf47@righttoknow.org.au

Dear Mr Smith

**NOTICE OF DECISION: UNDER SECTION 24A
OF THE FREEDOM OF INFORMATION ACT 1982**

I refer to your request of 3 July 2020 to the Department of Health (department) seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

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.

I am writing to advise you of my decision.

FOI decision

I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to Freedom of Information requests. I am writing to notify you of my decision on your request.

Document non-existent

All reasonable steps have been taken to find a document of the nature referred to in your request including consultation with relevant policy and program areas, thorough searches of departmental file management systems, electronic documents on shared drives and departmental databases.

I am satisfied the consultation undertaken and the searches conducted were thorough and all reasonable steps have been taken to locate existing documents relevant to your request. I am satisfied the document referred to in your request does not exist.

As a consequence, relying on section 24A of the FOI Act, I cannot provide access to the document you requested.

Production of a document

Section 17 of the FOI Act applies where an FOI request is made to an agency for information that is not available in discrete form in written documents held by the agency.

In certain circumstances, paragraph 17(1)(c) of the FOI Act requires the agency to produce a written document containing the information requested by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information or by making a transcript from a sound recording.

However, subsection 17(2) does not require an agency to produce a written document containing the requested information where doing so would substantially and unreasonably divert the resources of the agency from its other operations.

The factors I have taken into account when determining whether there would be a substantial and unreasonable diversion of resources within the meaning in subsection 17(2) are:

- the staffing resources available to the department for processing FOI requests; and
- the impact that processing the request may have on other work in the department.

Following consultation with the relevant line area and taking the above factors into account, I am satisfied that processing your request by producing a discrete document would require substantial and unreasonable diversion of resources in the department away from priority work relevant to the management of the coronavirus pandemic.

Accordingly, I have decided the department is not required to produce and provide a document to you as if the department had such a documents in its possession.

As a consequence, relying on subsection 17(2) of the FOI Act, I cannot provide access to the document you requested.

FOI review rights

If you are dissatisfied with my decision, you may apply for an internal review or Australian Information Commissioner (Information Commissioner) review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the department for an internal review of my decision. The internal review application must be made within 30 days of the date of this notice (or such further period as the department allows). Where possible please provide reasons why you consider review of the decision is necessary. The internal review will be carried out by another officer of this department within 30 days.

An application for an internal review should be addressed to:

Email: FOI@health.gov.au
OR
Mail: FOI Unit (MDP 516)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review must be made in writing within 60 days of this notice (if you do not request an internal review).

The Australian Information Commissioner can be contacted by:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992

More about the Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at <https://www.oaic.gov.au/freedom-of-information/reviews/>

You may also make a complaint to the Information Commissioner about action taken by the department in relation to your application. Further information can be obtained from the OAIC website.

Relevant provisions of the FOI Act

The FOI Act, including the provisions referred to in this letter, can be accessed from the Federal Register of Legislation website: <https://www.legislation.gov.au/Details/C2020C00246>

Contacts

If you require clarification of any of the matters discussed in this letter, you should contact the FOI unit on (02) 6289 1666 or email FOI@health.gov.au.

Yours sincerely

A handwritten signature in blue ink that reads "KBishop".

K. Bishop
Principal Lawyer
Legal Advice & Legislation Branch

31 August 2020