



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2020/161/IR

**INTERNAL REVIEW DECISION AND REASONS
UNDER SECTION 54 OF
THE FREEDOM OF INFORMATION ACT 1982**

REQUEST BY: Mr John Smith

**DECISION BY: Paul Wood
Chief Financial Officer
Corporate Division**

By email: John Smith - foi+request-6468-0ea0d403@righttoknow.org.au

Dear Mr Smith

I refer to your request, dated 31 July 2020, seeking internal review of the decision (the **primary decision**) made on the same day by Ms Ellyse Paton, Acting Chief People Officer, People Branch, Department of the Prime Minister and Cabinet (the **Department**), in relation to your request submitted on 6 July 2020, for access under the *Freedom of Information Act 1982* (the **FOI Act**) in the following terms:

I seek the following under FOI;

- A document that contains the total number of non-APS staff, filling equivalent roles to actual APS staff in your department.*
- A document that contains a list of all position titles within your department, that are currently filled by non-APS staff.*

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

If no such document exists please advise.

The primary decision refused the request under section 24A(1)(b)(ii) of the FOI Act, on the basis that all reasonable steps had been taken to find the document, and the document does not exist.

Under section 54(2) of the FOI Act, an applicant is entitled to apply for an internal review of a decision refusing to give access to a document in accordance with a request.

In your request for internal review, you submitted that:

I seek that both documents be each respectively produced under s17(1) of the FOI act.

Authorised decision maker

Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the original decision) to review the decision.

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Internal review decision

I have decided to vary the primary decision.

In relation to part one of your request, I have decided to affirm the primary decision to refuse this part of your request, on the basis that the Department has undertaken reasonable searches for the requested document, and it does not exist.

In relation to part two of your request, I have interpreted it to be for a document that lists the position titles of non-APS contractors in the Department. In accordance with section 17(1) of the FOI Act, a document has been created that contains this information, and I have decided to grant access to this document.

The document being released to you under this internal review decision is **attached**.

In reaching my decision, I have had regard to:

- the terms of your request;
- the primary decision;
- your request for internal review;
- the FOI Act;
- the 'Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*'¹ (the **FOI Guidelines**).

Reasons

Part one of your request

In relation to part one of your request, you sought access to:

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

¹ FOI Guidelines combined November 2019 published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

I have carefully reviewed the primary decision and the reasons for that decision, including the searches undertaken by the relevant line area for the document within scope of the specific terms of your request.

I am satisfied with the primary decision-maker's finding that reasonable searches were undertaken for the request document, and the requested document does not exist. I confirm the advice by the primary decision-maker, as set out in the primary decision, that the Department does not record the number of non-APS staff, filling equivalent roles to actual APS staff in the Department.

Your request for internal review sought the production of the requested documents under section 17(1) of the FOI Act.

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

(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.

The obligation to produce a written document under section 17(1) of the FOI Act only arises if the Department already held the requested information (but not in a discrete form).

However, as advised in the primary decision, the Department does not hold the information you have requested in part one of your request. Therefore, the Department cannot produce a document containing the requested information in discrete form, and section 17(1) of the FOI Act does not apply to part one of your request.

Accordingly, I am satisfied that the primary decision refusing part one of your request was correct, and have adopted it as my own for the purposes of this internal review decision.

Part two of your request

In relation to part two of your request, you sought access to:

- A document that contains a list of all position titles within your department, that are currently filled by non-APS staff.

I consider that it is open for this scope to be interpreted to mean a document that lists the position titles of non-APS contractors in the Department. I can advise that this information is held by the Department which is not available in discrete form, however the Department is able to produce a written document containing this information in discrete form.

In accordance with section 17(1) of the FOI Act, the Department has created a document that contains the information you have requested in part two of your request.

I have decided to grant access to this document.

Publication of the document

Under section 11C of the FOI Act, the Department will make arrangements to publish the document released to you as part of this internal review decision on the Department's FOI Disclosure Log.

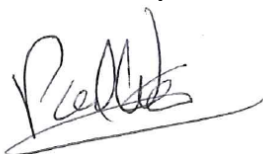
Review rights

Information about your rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Wood', with a horizontal line underneath.

Paul Wood
Chief Financial Officer
Corporate Division
31 August 2020