



Australian Government
Department of Finance

Reference: FOI 20/48
Contact: FOI Team
Telephone: (02) 6215 1783
e-mail: foi@finance.gov.au

John Smith

via email: foi+request-6510-249411e4@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request – FOI 20/48

Thank you for your email to the Department of Finance (Finance) in which you sought access to the following documents under the *Freedom of Information Act 1982* (FOI Act).

I request a document that contains the total number of labour hire staff procured throughout the APS.

I also request a document that contains the total number of labour hire staff procured throughout the APS, that are fulfilling functionally equivalent roles to actual APS employees.

On 31 July 2020 Finance advised you that our preliminary search indicated that Finance did not hold a record of the number of labour hire staff procured throughout the APS. You requested that Finance produce a document through section 17(1) of the FOI Act.

The purpose of this letter is to provide you with my decision.

Authorised decision-maker

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

Decision

Under subparagraph 24A(1)(b)(ii) of the FOI Act, an agency may refuse a request for access to a document if the agency is satisfied that the document does not exist. In line with this provision, I have decided to refuse your request.

Under paragraph 17(1) of the FOI Act, where Finance could produce a written document containing the information you seek in discrete form by the use of a computer or other equipment that is ordinarily available to it for retrieving or collating stored information, then Finance would treat your request as a request for access to a document. However, as Finance does not store the information you seek, I have also decided to refuse your request for a computer generated document.

Reasons for Decision

In making my decision, I have had regard to the following:

- the scope of your FOI request;
- searches for any relevant documents held within Finance
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC Guidelines).

In coming to my decision, I have:

- consulted widely within Finance and across its functional areas. I have been advised that there are no areas within Finance that have any knowledge or records of documents within the scope of your request;
- ensured that thorough searches were undertaken of relevant hardcopy files and Finance systems where any such documents are likely to have been recorded and / or retained; and
- ensured searches were undertaken of relevant electronic files where any such documents are likely to have been recorded and / or retained.

As a result of the searches and consultations, I am satisfied that all reasonable steps have been taken to find any documents that may fall within the scope of your request. I have also satisfied that all reasonable steps have been taken to find any information stored on computer or other equipment which may be used to generate a written document for you. As no such document/s exist and no such information is stored, I have decided to refuse your request.

Charges

In regard to the processing of your FOI Request, I have decided that you are not liable to pay a charge in accordance with regulation 3 of the *Freedom of Information (Charges) Regulations 1982* for the processing which has been undertaken to date.

Review Rights

The process for review and appeal rights is set out at [Attachment A](#).

Please contact the FOI Team on the above contact details if you wish to discuss your request.

Yours sincerely,



Jane Wagner
Acting Assistant Secretary
Procurement Policy
Department of Finance

20 August 2020



Australian Government
Department of Finance

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why. You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can

review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant

decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:

Post: Office of the Australian Information Commissioner
GPO Box 2999
CANBERRA ACT 2601
Email: enquiries@oaic.gov.au
Fax: 02 9284 9666
In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is currently \$932 (from 1 July 2019), although there are exemptions for

health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred. Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601
Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603
Phone: 02 6215 1783
Email: foi@finance.gov.au
Website: www.finance.gov.au/foi/foi.html