



Australian Government

Department of Health

Department Reference: FOI 1846 IR

Mr John Smith

Via email: foi+request-6512-a809c34b@righttoknow.org.au

Dear Mr Smith

NOTICE OF DECISION - INTERNAL REVIEW

The purpose of this letter is to advise you of my decision following your request for internal review of the Department of Health's (department) decision on FOI 1846 under the *Freedom of Information Act 1982 (Cth)* (FOI Act).

On 23 July 2020, you requested access to the following documents:

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

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 throughout your department.

Additionally, I seek a document that contains the amount spent on labour hire staff procured throughout your department, for the 19/20 financial year.

Finally I seek a document that contains the amount spent on labour hire staff procured throughout your department, for the 19/20 financial year; that are fulfilling functionally equivalent roles to actual APS employees in your department.

If any of the above documents do not exist please advise.

You were advised on 25 August 2020 of the department's primary decision that, after all reasonable steps had been taken to locate documents relevant to your request, the decision maker was satisfied that the department does not hold any documents relevant to your FOI request.

You requested an internal review of this decision on 26 August 2020, and provided the following contention to support your request for internal review:

I seek internal review of this decision. Please produce the document under s17 of the FOI act.

Decision

I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests. I am writing to notify you of my decision in response to your request for internal review.

In making my decision on internal review, I am satisfied the department is not required to produce documents as requested.

I have decided to affirm the primary decision of 19 August 2020.

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, the agency may produce a written document under paragraph 17(1)(c) containing the information requested by 'use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information.'

However, subsection 17(2) does not require an agency to comply with paragraph 17(1)(c) if production of a document containing the requested information would 'substantially and unreasonably divert the resources of the agency from its other operations.'

In determining whether there would be a substantial and unreasonable diversion of the agency's resources within the meaning of subsection 17(2), I have taken the following factors into consideration:

- 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 producing a discrete document to provide the information requested would be labour intensive and require a substantial and unreasonable diversion of resources in the department away from priority work and work relating to the management of the coronavirus pandemic. Some of the

information requested would also need to be obtained from several other government departments.

Accordingly, it is my decision that the department is not required to produce and provide a document to you under section 17, as if the department had such documents in its possession. As a result, I cannot provide access to the documents requested in your submission for internal review.

FOI Review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner (Information Commissioner) under section 54L of the FOI Act to review my decision. An application for review to the Information Commissioner must be made in writing within 60 days of this notice.

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:
<http://www.oaic.gov.au/freedom-of-information/requesting-a-review>.

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.

FOI Act: Relevant provisions

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 Freedom of Information Unit on (02) 6289 1666 or at FOI@health.gov.au.

Yours sincerely



Paul McCormack
First Assistant Secretary
Financial Management Division

21 September 2020