



Our ref: FOI20/118; CM20/6789

21 August 2020

Mr John Smith  
By email: [foi-request-6514-3c5ad77f@righttoknow.org.au](mailto:foi-request-6514-3c5ad77f@righttoknow.org.au)

Dear Mr Smith

### **Freedom of Information Request FOI20/118 – Decision Letter**

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (the FOI Act).

#### **Your Request**

On 23 July 2020, you requested access to:

*A document that contains:*

- 1. the total number of labour hire staff procured throughout the APS, that are fulfilling functionally equivalent roles to actual APS employees throughout your department,*
- 2. the amount spent on labour hire staff procured throughout your department, for the 19/20 financial year, and*
- 3. 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.*

On 6 August 2020, the department acknowledged your request.

A decision in relation to your request is due on 22 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 Attorney-General's Department (the department).

I have identified one document that falls within the scope of part two of your request. I did this by making inquiries of staff likely to be able to identify relevant documents and arranging for comprehensive searches of relevant departmental electronic and hard copy holdings.

I have identified no documents in the department's possession which fall within parts one and three of the scope of your request.

In making my decision regarding access to the relevant document falling within the scope of part two of your request, I have taken the following material into account:

- the terms of your request
- the content of the one document identified as falling within the scope of your request
- the provisions of the FOI Act, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

In addition to the above, and in making my decision that there are no documents in the department's possession falling within parts one and three of the scope of your request, I have had regard to 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*).

I have decided to grant access to the one document identified as falling within the scope of part 2 of your request. I have also decided to refuse access to parts one and three of your request pursuant to section 24A of the FOI Act.

### **Additional Information**

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

The Schedule of Documents at **Attachment B** sets out brief information about the document within the scope of part two of your request and my decision in relation to access to that document.

The Statement of Reasons at **Attachment C** sets out the reasons for my decision to refuse access to parts one and three of your request.

The documents to which I have decided to grant full or partial access under the FOI Act are at **Attachment D**.

### **Questions about this decision**

If you wish to discuss this decision, the FOI case officer for this matter is 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  
Attachment B: Schedule of Documents  
Attachment C: Statement of Reasons  
Attachment D: Documents



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

**Attachment A - FOI Review Rights**

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

***Internal review***

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter. Applications for internal review must be lodged by email or post.

email: [foi@ag.gov.au](mailto:foi@ag.gov.au)  
post: Freedom of Information and Privacy Section  
Strategy and Governance Branch  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

***Information Commissioner review***

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review this decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of the decision letter, and can be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 5218, SYDNEY NSW 2001  
in person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website.

Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.



**Attachment B - Schedule of Documents - Freedom of Information Request FOI20/118**

Document no.	Date	No. pages	Description	Access Decision	Exemption/s Applied
1	23/07/2020	1	Document setting out the department's labour hire expenses for the period 1 July 2019 through to 30 June 2020.	Grant access	N/A



### **Attachment C – Statement of Reasons – FOI20/118**

This document, when read in conjunction with the decision letter above, provides information about the reasons I have decided to refuse access to parts one and three of your request under the *Freedom of Information Act 1982* (FOI Act).

#### **Section 24A - Requests may be refused if documents cannot be found, do not exist or have not been received**

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 section 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.

Staff employed in the department's Human Resources Branch have relevantly advised that it is not possible to create a document containing the information described at parts one and three of your request using Aurion, the departmental system used to maintain employee information, report on human resources information and maintain organisational structures for the department. This is because Aurion does not differentiate between people described as contractors who meet the definition of 'labour hire staff... that are fulfilling functionally equivalent roles to actual APS employees' 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 documents for parts one and three of your request, but that this would require the examination of the circumstances of every person categorised as a 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 'labour hire staff... that are fulfilling functionally equivalent roles to actual APS employees'. 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 discrete documents containing only the information you requested to access at parts one and three of your request.

To determine whether the department is required by section 17 of the FOI Act to undertake the steps above to produce the documents 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>

Having regard to the above, I am satisfied that the department is not able to produce the documents you have requested for parts one and three of your request, 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 to parts one and three of your request pursuant to section 24A of the FOI Act.

---

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