



Australian Government
Attorney-General's Department

Our ref: FOI20/125; CM20/6919

19 August 2020

Mr John Smith

By email: foi+request-6542-585c66a4@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request FOI20/125 – Decision Letter

The purpose of this letter is to give you a decision about your request for access to documents which you submitted to the Attorney-General's Department (the department) under the *Freedom of Information Act 1982* (the FOI Act).

Your Request

On 29 July 2020, you requested access to:

A document that contains a list of all the position/job titles of every contractor within your department. e.g. a position title may be: 'security guard', or 'consultant', or 'APS3 FOI officer', etc. You may omit duplicate position titles. But where a position title is duplicated, please indicate the number of contractors employed within the department that have that position title.

If this request would be refused because providing the number of people employed under each position title would be impractical; please instead provide a bare list of position titles that are currently filled by contractors.

On 6 August 2020, the department acknowledged your request by email and requested that you provide a date range for your request. The department indicated to you that a date range was required to assist the department search for and identify the information being requested.

On 13 August 2020, the department contacted you again to follow up the request for a date range as no response had been received from you. Later that same day, you responded to the department's request and advised that:

I agree with your interpretation of the request.

Please list out position titles that have at some point, been filled by a labour hire contractor in the 19/20 financial year. Please make reasonable efforts to search for which positions have been filled by labour hire arrangements.

On 18 August 2020, the department responded to your email of 13 August 2020 and advised it was understood that the date range for your request was the 2019-20 financial year. The department also sought confirmation whether your request was for:

- a document that contains a list of all the position/job titles of every contractor within the department for the 2019-20 financial year, or
- a document that contains a list of position titles that have at some point, been filled by a labour hire contractor in the 2019-20 financial year.

On 18 August 2020, you responded to the department's email and clarified your request was for:

A document that contains a list of position titles that have at some point, been filled by a labour hire contractor in the 2019-20 financial year.

Later that same day, the department responded to your email and advised that your request would continue to be processed on the basis of the above scope.

A decision in relation to your request is due on 28 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 department.

In making my decision, I have taken the following into account:

- the terms of your request,
- advice provided to me by officers with responsibility for matters to which your request relates,
- the provisions of the FOI Act,
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines), and
- 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*).

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.

Staff employed in the department's Human Resources Branch have relevantly advised that it is not possible to create a document containing the information you have requested 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 contractor' 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 the document you requested to access, but that this would require the examination of the circumstances of every person categorised as 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 a 'labour hire contractor'. 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 a discrete document containing only the information you have requested to access.

To determine whether the department is required by section 17 of the FOI Act to undertake the steps above to produce the document 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.*¹

Having regard to the above, I am satisfied that the department is not be able to produce the document you have requested, 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 pursuant to section 24A of the FOI Act.

Additional Information

Please note you can read more about the department's employee profile in its annual reports, which are available at www.ag.gov.au.

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

If you wish to discuss this decision, you can the FOI case officer for this matter, Sarah, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Antony Catt
Director
Freedom of Information and Privacy Section

Attachments

Attachment A: Review Rights

¹ [2013] FCAFC 67 [44].