



GPO Box 4889, Sydney NSW 2001

Our reference: 1-MHO7EZL  
Contact officer: J.Scolyer  
Email: xxx@xxx.xxx.xx

28 August 2020

Mr John Smith  
C/- Right to Know Website

## Decision regarding your Freedom of Information request – 1-MHO7EZL

Dear Mr Smith

I refer to your request for documents under the *Freedom of Information Act 1982 (FOI Act)* received by our office on 30 July 2020.

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

### Summary

On 30 July 2020 you requested access to documents as follows:

*A document that contains a list of all the position/job titles of every non-APS contractor working within your department. e.g. a position title may be: 'security guard', or 'consultant', or 'APS3 FOI officer', etc.*

*You may omit repeating a position title when there exist multiple contractors who have that position title. Additionally, if it would not be too onerous, please indicate the number of contractors that hold each position title.*

*If no such document exists please produce a document containing the information under s17.*

### Decision

I am satisfied that the document sought by you does not exist and the ATO is not able to produce the document you have requested, using a computer or other equipment that is ordinarily available.

I have therefore decided to refuse access pursuant to s 24A of the FOI Act. My reasons for refusal are below.

### Material taken into account

I have taken the following material into account in making my decision:

- the terms of your request;
- the FOI Act; and
- the guidelines issued by the Australian Information Commissioner under section 93A

of the FOI Act.

### **Reasons for decision**

You have requested a document that contains a list of all the positions or job titles of every non-APS contractor working in the ATO. Where no such document exists, you requested that a document containing the information you have sought be produced pursuant to section 17 of the FOI Act.

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

Section 24A of the FOI Act allows that if an agency has taken all reasonable steps to find the document and it cannot be found or does not exist, the request for access can be refused. The relevant section is as follows:

#### *Section 24A Document lost or non-existent*

- 1) *An agency or Minister may refuse a request for access to a document if:*
  - a. *All reasonable steps have been taken to find the document; and*
  - b. *The agency or Minister is satisfied that the document:*
    - i. *is in the agency's or Minister's possession but cannot be found; or*
    - ii. *does not exist.*

Upon receiving your request, I contacted the relevant business lines within the Australian Taxation Office (ATO) and had officers from those areas conduct a reasonable search of all relevant ATO computer systems or hard copy files that may contain documents within the scope of your request. Further information about what constitutes a reasonable search can be found in the guidelines issued by the Australian Information Commissioner, under section 93A of the FOI Act.

Following enquiries with the relevant ATO business lines, it was identified that a document containing the information you have requested does not exist. Therefore, I must refuse your request under s24A of the FOI Act as, the documents do not exist.

### **Section 17 – Requests involving use of computers etc.**

Subsection 17(1) of the FOI Act relevantly provides that

- 1) *Where:*
  - (a) a request is made; (b) the information in respect of that request is not available in discrete form in written documents of the agency; and*
  - (c) the agency could produce a written document containing the information in discrete form by the use of a computer or other equipment ordinarily available to the agency;*

*then the agency shall deal with the request as if it were a request for access to a written document so produced.*

Subsection 17(2) of the FOI Act states that an agency is not required to comply with subsection 17(1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

Specifically, in respect of your request, there is no document in discrete form containing the information you require. The ATO cannot produce a written document containing a complete list of non-APS contractors working in the ATO by use of a computer or other equipment that is ordinarily available.

While the ATO has a central repository database that documents all users with access to our system, and although we can extract data from this database relatively easily, this information will not provide a list of all non-APS contractors working in the ATO, as not all of the contractors require systems access to complete their roles. Beyond the data described above, the ATO engages externals across numerous business lines, that would not be captured in any central repository database from which it can be extrapolated.

As non-exhaustive examples, various ATO business lines engage legal experts, property contractors, independent experts and advisors. These are just a snapshot of examples of some of the non-APS contractors that are not captured in any central repository database held by the ATO.

In order to satisfy your request, each and every business line within the ATO would need to be diverted from their ordinary duties in order to locate and ascertain the number of non-APS contractors that they engage. They would then be required to manually provide details of the contractors to the FOI officers and this information would need to be collated in order to produce a written document.

As the information is not held in a central repository database and requires a high level of manual input and collation there is a real risk that the information produced may not be accurate.

For clarity, we are more easily able to produce numbers for our labour hire cohort as they are managed through a bespoke system. This system will not capture all data required for this particular enquiry nevertheless, it is my understanding that such information has already been made available to you in response to your previous FOI requests.

Accordingly, I have refused your request for documents under section 24A of the FOI as they do not exist. Additionally, I have also declined to produce a document under section 17 of the FOI Act, with reference to the onerous nature of the production of such document, in circumstances where the information is not centrally held and would require ATO wide manual collation.

### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

### ***Internal review***

Under section 54 of the FOI Act, you may apply in writing to the ATO for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, quoting our reference number at the top of this letter, and be lodged in one of the following ways:

email: **FOI@ato.gov.au**  
post: Australian Taxation Office, General Counsel, GPO Box 4889, Sydney  
NSW 2001.

Where possible please attach reasons why you believe review of the decision is necessary.

The internal review will be carried out by another officer within 30 days. If you have not been informed of the outcome of the review within that time, you may apply to the Australian Information Commissioner under section 54L of the FOI Act.

*Australian Information Commissioner review*

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

online: [https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)  
email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)  
post: GPO Box 5218, Sydney NSW 2001

Visit the OAIC website, <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>, for more information about Australian Information Commissioner review.

### **Complaints**

Any complaint about the processing of your FOI request can be forwarded to the OAIC. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

online: [https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA\\_1](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1)  
email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)  
post: GPO Box 5218, Sydney NSW 2001

The Information Commissioner can be contacted on 1300 363 992.

### **Questions about this decision**

If you wish to discuss this decision, please contact me via email at xxx@xxx.xxx.xx.

Yours sincerely



J.Scolyer  
Senior Lawyer  
General Counsel  
Australian Taxation Office