



Australian Government

Department of Education, Skills and Employment

John Smith

foi+request-6556-b6eabdbf@righttoknow.org.au

Dear John Smith

I refer to your correspondence received by the Department of Education, Skills and Employment (the department) on 31 July 2020 in which you requested access under the *Freedom of Information Act 1982* (the FOI Act) to:

“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.”

I am authorised to make decisions under the FOI Act and my decision regarding your request and the reasons for my decision are set out below.

Decision on access to documents

I have decided to refuse your request pursuant to subparagraph 24A(1)(b)(ii) of the FOI Act on the basis that I am satisfied that the documents you are requesting do not exist.

Reasons for decision

An agency or Minister may refuse a request for access under subsection 24A(1) of the FOI Act 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.*

I have decided to refuse your request pursuant to section 24A of the FOI Act on the basis that I am advised that all reasonable steps have been taken by relevant departmental officers to find documents falling within the scope of your request and those documents do not exist.

In processing your FOI request, I have considered whether a document can be produced under section 17 of the FOI Act. Section 17 relevantly provides:

(1) Where:

(a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;

(b) 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 [...]

(c) the agency could produce a written document containing the information in discrete form by:

- (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
- (ii) the making of a transcript from a sound recording held in the agency;

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 and, for that purpose, this Act applies as if the agency had such a document in its possession.

(2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

I am advised that checks have been conducted and have confirmed that the department's systems do not ordinarily use a "position title" field as an identifier for contractors. Section 17 of the FOI Act can apply in circumstances where the information requested is able to be produced in discrete written form by "*the use of a computer or other equipment ordinarily available to the agency for retrieving or collating stored information*" (section 17(1)(c)(i) above). As noted above, the information you request is not centrally collated in electronic record systems. As such, section 17 of the FOI Act does not require production of a document in this case as it is not possible to produce the document you have requested using a computer or other equipment that is ordinarily available to the department for retrieving or collating stored information.

In forming this view I have had regard to the decision of the Full Federal Court of Australia in *Collection Point Pty Ltd v Commissioner of Taxation* which stated in relation to section 17(1)(c)(i) of the FOI Act that the computer or other equipment referred to above "*must be capable of functioning independently to collate or retrieve the stored information*". For the reasons given above, the department's computer systems cannot function independently to collate the information you request.

I have therefore decided to refuse your request pursuant to subparagraph 24A(1)(b)(ii) of the FOI Act. I have enclosed information about your rights of review under the FOI Act at **Attachment A**.

Yours sincerely

J.T.

Jim
Authorised FOI Decision Maker
Schools and Corporate Legal Branch

28 August 2020

Attachment A

Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Email: foi@dese.gov.au

Post: The FOI Coordinator
Schools and Corporate Legal Branch
Department of Education, Skills and Employment
Location code: C50MA10
GPO BOX 9880
CANBERRA ACT 2601

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC, you must apply for the review, in writing or by using the online merits review form available at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC, your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The AIC advises that, before making a complaint to it, you should raise your concerns directly with the relevant agency.

Applications for review or complaint can be lodged in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218 Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.