



11 September 2020

Our reference: LEX 58206

Mr Keith Owen
Right to Know

Only by email: foi+request-6660-7683e7dd@righttoknow.org.au

Dear Mr Owen

Your Freedom of Information Request

I refer to your request to Services Australia dated 30 August 2020, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following documents:

'I seek access to the following documents in relation to the Department obtaining information about customers from social media websites:

- 1/ All policy documents related to this practice.
- 2/ All instruction or procedure documents related to this practice.
- 3/ All instructions from senior employees to subordinate staff related to this practice.
- 4/ Information on how the data obtained is stored and how it is used.
- 5/ Any guidelines to staff instructing them to use undercover or alias identities to join Social Media groups not open to the general public in order to gain access to information about the Department's customers.
- 6/ Any guidelines to staff including the Department's Legal Services to legal firms and solicitors acting on behalf of the Department to obtain information from Social Media groups that are closed to the General Public.
- 7/ Any guidelines to Departmental staff concerning the disclosure to customers about the collection of information from private Social Media Groups about them.

I have recently become aware of the practice of the Department in obtaining information from PRIVATE SOCIAL MEDIA GROUPS about the Department's Customers for use in litigation. This would of course appear to be at odds with Privacy Legislation and hence attracts a particularly high level of public interest. We have evidence that this has occurred so there is no point in denying the practice exists on this occasion (note previous refused request along the same lines).'

Currently your request does not sufficiently identify the documents you require. Specifically, parts 1, 3 and 6 of your FOI request are unclear and do not provide enough information to allow Services Australia to locate the documents you are seeking.

As your request did not provide a contact telephone number, Services Australia is now formally consulting with you under section 24AB of the FOI Act.

This letter is giving you an opportunity to provide us with further information about the documents you need. Providing this additional information will assist Services Australia in processing your request.

If you decide not to provide further information or revise your request, I will have to refuse your freedom of information (**FOI**) request as a 'practical refusal reason' exists. For a more detailed explanation of what this means, including some suggestions on what to consider when revising your request, please see **Attachment A**.

How to send us a 'revised request'

Before I make a final decision on your request, you can submit a revised request.

Within the next 14 days (consultation period) you must do one of the following, in writing:

- withdraw the request;
- make a revised request; or
- tell us that you do not want to revise your request.

If you do not contact us during the consultation period, we will assume you do not want to continue with your request. See **Attachment A** for relevant sections of the FOI Act.

If you decide to make a revised request you should be specific about what documents you actually want. This could help Services Australia find the documents.

We have 30 days to give you a decision about your request, however the time taken to consult with you now is not included in this 30 day time period.

Contact officer

I am the contact officer for your request. During the consultation period you are welcome to ask for my help in revising your request. You can contact me:

- in writing to the address at the top of this letter; or
- via email to FOI.LEGAL.TEAM@servicesaustralia.gov.au.

Note: When you contact us please quote the reference number **FOI LEX 58206**.

Your response will be expected by **25 September 2020**. If no response is received your request will be taken to be withdrawn.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@servicesaustralia.gov.au.

Yours sincerely

Don
Authorised FOI Decision Maker
Freedom of Information Team
Employment Law and FOI Branch | Legal Services Division
Services Australia

What I took into account

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As your request currently stands, I am unable to identify some of the documents falling within the scope of your request, and am therefore unable to process your request.

With regard to part 1, it is unclear what you mean when you use the term 'policy'. The Department of Social Services (**DSS**) has policy responsibility for Commonwealth Government programs relating to Families and Children, Housing Support, Seniors, Communities and Vulnerable People, Disability and Carers, Women's Safety and Mental Health.

DSS publishes a number of policy documents that may assist you. They are publicly available at: <https://guides.dss.gov.au/>. You may like to withdraw part 1 of your request if these publicly available policy guides meet the scope of this part of your request.

Alternatively, noting that Services Australia delivers government payments and services on behalf of the Commonwealth, whereas DSS has policy responsibility, please confirm what you mean by the term "policy".

With regard to part 3 of your request, the terms 'senior employees' and 'subordinate staff' require further clarification to enable Services Australia to locate the documents you require. In particular, it is unclear whether your reference to senior staff was meant to refer to Senior

Executive Staff of the Australian Public Service, or whether it was simply meant to refer to staff within Services Australia that have staff supervisory responsibilities. Can you please clarify your use of the term 'senior employees'.

For example, you may wish to revise part 3 of your request to:

- all instructions from Senior Executive Staff (**SES**) related to this practice.

I am also seeking clarification from you in relation to part 6 of your request. The relevant Services Australia business area has advised that part 6 of your request is unclear as they are uncertain of the meaning of the term '... including the Department's Legal Services to legal firms and solicitors acting on behalf of the Department...' They are also uncertain of the meaning of the term '...obtaining information from Social Media groups that are closed to the General Public...' Consequently, the business area has requested you provide further detail and clarification regarding the documents you require.

If you do not revise, I intend to refuse your FOI request as a 'practical refusal reason' exists under sections 24AA(1)(b) and 24 of the FOI Act. Under the FOI Act, the practical refusal reason is that your request does not satisfy the requirements in section 15(2)(b) (identification of documents).

Other assistance

Noting that part 6 of your request appears to be in relation to litigation, when revising the scope of your request, in order to try and avoid the request being too large to process, you may wish to reduce the scope by asking for instructions or guidelines from specific business areas, such as the SES officer with responsibility for Services Australia's Litigation and Information Release Branch.

Relevant sections of the *Freedom of Information Act 1982*

Section 24AA(1)(b) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the request does not satisfy the requirement in section 15(2)(b) of the FOI Act.

Section 15(2)(b) of the FOI Act provides that a request must provide such information as is reasonably necessary to enable Services Australia to identify the documents that are being requested.

Section 24AB(6) says that the applicant must, before the end of the consultation period, do one of the following, by written notice to Services Australia or Minister:

- withdraw the request,
- make a revised request, or
- indicate that the applicant does not wish to revise the request.

Section 24AB(7) of the FOI Act provides that the request is taken to have been withdrawn at the end of the consultation period if:

- the applicant does not consult the contact person during the consultation period in accordance with the notice, or

- the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.