



14 October 2020

Our reference: LEX 58206

Mr Keith Owen

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

Dear Mr Owen

Decision on your Freedom of Information Request

I refer to your request to Services Australia dated 31 August 2020, made under the *Freedom of Information Act 1982* (the **FOI Act**) in the following terms:

'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).'

My decision

I have decided to refuse your request under subsection 24(1) of the FOI Act because a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied under paragraph 24AA(1)(b) that your request does not provide sufficient information to enable Services Australia to identify the documents you are seeking, as required by paragraph 15(2)(b) of the FOI Act.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

You can ask for a review of our decision

If you disagree with the decision you can ask for a review. There are two ways you can do this. You can ask for an internal review from within Services Australia, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment B** for more information about how to arrange a review.

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



REASONS FOR DECISION

What you requested

Your request was framed in the following terms:

'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).'

Request consultation process

On 11 September 2020, I wrote to you providing a notice of intention to refuse your request under subsection 24AB(2) of the FOI Act (the **section 24AB notice**). I gave you an opportunity to consult with Services Australia to revise your request so as to remove the practical refusal reason.

On 16 September 2020, you responded to the section 24AB notice stating the following:

I understand how frustrating it is to be accountable. We have solid proof that the practice occurs, so I wish to now request an external review of your decision once you formally refuse it.

On 18 September 2020, Services Australia wrote to you seeking confirmation that you did not wish to revise the terms of your request. We advised you that, unless you told us otherwise, we would interpret your correspondence of 17 September 2020 as notice that you did not wish to revise the terms of your request.

You did not respond and your response was interpreted as being a refusal to revise the scope of your request.

What I took into account

In reaching my decision I took into account:

- your original request dated 31 August 2020;
- the section 24AB notice issued to you on 11 September 2020;
- your correspondence dated 16 September 2020;
- our correspondence dated 18 September 2020;
- consultations with Services Australia officers about:
 - the nature of the requested documents; and
 - Services Australia's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**); and
- the FOI Act.

Reasons for my decisions

I am authorised to make decisions under subsection 23(1) of the FOI Act.

Following the request consultation process outlined above, I am satisfied that a practical refusal reason still exists in that you have not provided sufficient information to identify the documents you are seeking. The reasons for my decision are outlined below.

Practical refusal reason

Paragraph 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 paragraph 15(2)(b) of the FOI Act (identification of documents).

Paragraph 15(2)(b) of the FOI Act provides that a valid FOI request must:

'provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it'.

Why your request does not satisfy the requirement in paragraph 15(2)(b)

Part 1 of your request is unclear in regard to what you mean by 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.

Noting that Services Australia delivers government payments and services on behalf of the Commonwealth, whereas DSS has policy responsibility, it is unclear what you mean by the

term “policy”.

As identified in the section 24AB notice, DSS publishes a number of policy documents that may assist you. They are publicly available at: <https://guides.dss.gov.au/>. Whilst this part of your request is unclear, these documents may assist.

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.

In relation to part 6 of your request, the following parts of your request are too unclear to process:

- ‘... including the Department’s Legal Services to legal firms and solicitors acting on behalf of the Department...’; and
- ‘...obtaining information from Social Media groups that are closed to the General Public’.

Conclusion

In summary, I am satisfied that your request does not satisfy the requirement in paragraph 15(2)(b) of the FOI Act, in that it does not provide sufficient information to enable Services Australia to identify the documents you are seeking.

I have found that a practical refusal reason exists in relation to your request for access to the documents. Accordingly I have decided to refuse your request under subsection 24(1) of the FOI Act.



Attachment B

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a freedom of information (FOI) decision

Before you ask for a formal review of a FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

Asking for a formal review of an FOI decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (**FOI Act**) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

1. an Internal Review Officer in Services Australia; and/or
2. the Australian Information Commissioner.

Note 1: There are no fees for these reviews.

Applying for an internal review by an Internal Review Officer

If you apply for internal review, a different decision maker to the Services Australia delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

Note 2: You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in Services Australia within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can **lodge your application**:

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au

Note 3: The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- If you have one, you should include with your application a copy of the Services Australia decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to Services Australia's decision.

Complaints to the Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Commonwealth Ombudsman may be made in person, by telephone or in writing. The Commonwealth Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.