



Trent Morrison-Francis
3 Jacinta Ct
CRESTMead QLD 4132
trent@ratpackgroup.com.au

Dear Mr Morrison-Francis,

Your Freedom of Information Request – Decision on Access

I refer to your email dated 4 June 2021 in which you requested access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

In complaint letter responses from Commonwealth Superannuation Corporation is advising the following: “We understand that this may be frustrating for you. Please be assured that we are endeavouring to update our systems as quickly as possible so we can withhold amounts for tax in accordance with the Decision. We hold an exemption for this financial year.”

Please provide a copy of all documents that shows that the Commissioner of Taxation or other authority has provided Commonwealth superannuation with an exemption to comply with the Douglas ruling in relation to Military Super for the financial years.

On 24 June 2021, you were informed that:

To assist with your own understanding, we are not saying that CSC has an exemption to comply with the [Commissioner of Taxation v Douglas \[2020\] FCAFC 220](#) ruling.

As the communication you refer to mentions ‘as directed by the ATO, CSC will report all applicable DFRDB and MilitarySuper invalidity benefit payments that were made for the 2020/2021 Financial Year to the ATO as a lump sum payments’. We would reiterate that CSC has an exemption to implement the ruling in the 2020/21 financial year while we continue to update our pension benefit payment system and apply the new tax rates.

You can locate more information here: [Tax Changes to Invalidity Pensions \(csc.gov.au\)](https://www.csc.gov.au/Tax-Changes-to-Invalidity-Pensions)

On 30 June 2021, you requested:

No

We are wanting the documents that exist to support this clean “ exemption to implement the ruling in the 2020/21”

You have not provided the details

On 2 August 2021, you were informed that:

Pay as you go (withholding and instalments) reporting obligations are determined by the Tax Office. The due dates for PAYG withholding can be found here [Pay as you go \(withholding and instalments\) | Australian Taxation Office \(ato.gov.au\)](#).



If you have any further questions, you can email our dedicated email address for this issue invaliditytaxation@csc.gov.au or call our dedicated phone number 1300 006 727.

We trust this information clarifies the matter for you.

On 17 July 2021, you requested:

It has been advised by CSC that the Australian Taxation Office has advice's to CSC was to withhold veterans FY21 taxation documents due to an "incorrect formulas".

Please provide all documents your agency holds in relation to this advice as well as meeting notes, emails and recorded calls of any follow up to this advice between the ATO and CSC.

I am asking that all names regardless of position in the APS are NOT redacted and duplicate documents are not required however draft documents are.

The period this search relates to is 01.01.20 to the date of this request.

On 2 August 2021, you were informed that:

For your information, the latest withholding variation update provided by the ATO can be found here [Tax Changes to Invalidity Pensions \(csc.gov.au\)](https://www.csc.gov.au/TaxChanges-to-Invalidity-Pensions).

If you have any further questions, you can email our dedicated email address for this issue invaliditytaxation@csc.gov.au or call our dedicated phone number 1300 006 727.

We trust this information clarifies the matter for you.

Decision

I am satisfied that all reasonable steps have been taken to find documents within the scope of your request, and that no such documents meeting the description of what you have asked for can be found or exist. As such, I must refuse your request for access to documents pursuant to section 24A of the FOI Act.

Material taken into account

In making my decision, I had regard to:

- a) the terms of the request;
- b) relevant provisions in the FOI Act; and
- c) the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reasons for Decision

Section 24A – documents that cannot be found or do not exist

Subsection 24A(1) of the FOI Act provides:

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.

The Office of the Australian Information Commissioner (OAIC) has issued guidelines pursuant to section 93A of the FOI Act. Agencies must have regard to these guidelines when processing requests under the FOI Act. At paragraphs 3.88-3.93 of the guidelines, the OAIC provides guidance as to the meaning of the term 'all reasonable steps' in subsection 24A(1).

To ensure that 'all reasonable steps' have been taken in this request, every reasonable avenue of locating the documents has been exhausted. The details of these searches are outlined below.

Searches were conducted of the approved records management system, Microsoft Outlook inboxes/files and instant messaging applications. No documents were found matching the scope of your request.

I am satisfied that 'all reasonable steps' have been taken to locate the documents sought. I am satisfied that the documents cannot be found or do not exist, and refuse access to this request under section 24A(1) of the FOI Act.

Please note, however, CSC assisted you by providing information under administrative access, in our emails dated 24 June 2021, 2 August 2021 and 2 August 2021 (publicly available information). CSC also provided a dedicated phone number and email address for this issue. CSC did not need to do so, but was acting within the spirit of the FOI Act, by providing assistance to you.

Review rights and complaints

If you are unsatisfied with my decision, information about your rights of review, and how you can make a complaint about the handling of your request, is at Attachment A.

Contact

If you wish to discuss my decision, please contact me on FOI@csc.gov.au.

Yours sincerely



FOI Authorised Officer 1
Commonwealth Superannuation Corporation

29 November 2021



ATTACHMENT A

INFORMATION ON REVIEW RIGHTS

The *Freedom of Information Act 1982 (the FOI Act)* gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by:

- (a) an internal review officer in CSC; or
- (b) the Australian Information Commissioner (**Information Commissioner**).

Internal Review

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- (c) made in writing;
- (d) made within 30 days of receiving this letter; and
- (e) sent to FOI@csc.gov.au.

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

Information Commissioner review

If you want to seek direct review by the Information Commissioner (and not internal review), you must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au Post: GPO Box 2999, Canberra ACT 2601 Fax: +61 2 9284 9666 Email: enquiries@oaic.gov.au	In person: Level 3, 175 Pitt Street, Sydney NSW 2000
--	---

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Commonwealth Ombudsman and Information Commissioner

Commonwealth Ombudsman

You may complain to the 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 Ombudsman may be made in person, by telephone or in writing. The 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.

Information Commissioner

You may also complain to the 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 Information Commissioner must be made in writing. The Information Commissioner's contact details are:

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