



Australian Government

Department of Education, Skills and Employment

Your Ref
Our Ref LEX44747

Matthew Peos

By email: foi+request-7933-a14278db@righttoknow.org.au

Dear Matthew

Your Freedom of Information request - consultation

I refer to your request, received by the Department of Education, Skills and Employment (department) on 10 October 2021, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

- 1) Clarify the Laws/Acts which the Commonwealth Department of Education, Skills and Employment are to abide by when assessing related matters to their Department..
- 2) Any Documents outlining direction given to the Commonwealth Department of Education, Skills and Employment from either The Government of Australia, The Parliament of Australia, Department of Health or Any other Regulatory Body in relation to the laws concerning the Covid 19 Mandate for Vaccination.
- 3) Any Documents sent to the Commonwealth Department of Education, Skills and Employment from The Government of Australia, The Parliament of Australia, The Department of Health or any other regulatory body outlining the necessity for a mandate on compulsory Vaccination.
- 4) Any communication from any other Administrative and/or Regulatory body outlining the Specifics of the Sars 2 / Covid 19 virus with an Environmental Impact study in relation to the workplace.
- 5) An official Dossier of the Covid 19 virus specifically outlining the virus at molecular level, effects, causes and treatments as essential to make an informed decision in relation to regulating and recommending future workplace employment policies and employee rights to be presided over essential for the competent regulation of the specified Departments.
- 6) Documents in relation as to which body regulates the Commonwealth Department of Education, Skills and Employment.

This documentation is specific to the operating procedures and standards of the Department of Jobs and Small Business in relation to general operations on a day to day basis and regulates the practices of all employees of the specified department and as such should be readily available upon request. I wish to see the official responses to these questions as I would like to make an informed decision regarding my future communications to regulatory bodies.

On 6 October 2021, you made a request to the department in very similar terms to your current request. By email on 7 October 2021, the department advised you that your 6 October 2021 request was not a valid request under the FOI Act because it did not provide enough information about the documents you wish to access to enable the department to identify them. You then submitted your request dated 10 October 2021.

Your current request

Part 1

We note that the FOI Act provides a right of access to documents in the possession of the department rather than to information. Accordingly, this part of the request is not valid under the FOI Act.

However, we can advise that, like all Australian Government agencies, the department must comply with all relevant laws at all times. The Acts the department has been given responsibility for administering are set out in the Administrative Arrangements Order (AAO). AAOs formally allocate executive responsibility among ministers and set out which matters and legislation are administered by which Australian Government department or portfolio. The current AAO can be found at the following link:
<https://www.legislation.gov.au/Details/C2021Q00014>.

Noting the above, the department will take no further action in relation to this part of your request.

Parts 2 and 3

At part 2 of your request, you seek access to 'any Documents outlining direction given to the Commonwealth Department of Education, Skills and Employment from either The Government of Australia, The Parliament of Australia, Department of Health or Any other Regulatory Body in relation to laws concerning the Covid 19 Mandate for Vaccination.'

Part 3 of your request is worded as follows, 'Any Documents sent to the Commonwealth Department of Education, Skills and Employment from The Government of Australia, The Parliament of Australia, The Department of Health or any other regulatory body outlining the necessity for a mandate on compulsory Vaccination.'

At both of these parts of your request, you refer to a COVID-19 vaccination mandate. I am advised there is no mandate for the Australian public to receive a vaccination against COVID-19, so it is unclear what your request is referring to in these parts of your request.

Please see our further comments about these parts of your request below.

Parts 4 and 5

Parts 4 and 5 of your request are in the following terms:

4) Any communication from any other Administrative and/or Regulatory body outlining the Specifics of the Sars 2 / Covid 19 virus with an Environmental Impact study in relation to the workplace.

5) An official Dossier of the Covid 19 virus specifically outlining the virus at molecular level, effects, causes and treatments as essential to make an informed decision in relation to regulating and recommending future workplace employment policies and employee rights to be presided over essential for the competent regulation of the specified Departments.

I am advised by the relevant business area within the department that the department has not received any communication from any administrative and/or regulatory body containing the information you have requested at part 4 of your request. I am further advised that, while it is not entirely clear what is meant by part 5 of your request, the department has not received nor sought a dossier of the kind described in this part of your request.

Noting the department does not hold the documents sought at these parts of your request, we will treat parts 4 and 5 of your request as withdrawn unless you advise otherwise in any response to this notice.

Part 6

At part 6 of your request, you seek access to 'documents in relation as to which body regulates the Commonwealth Department of Education, Skills and Employment.'

To assist you with this part of your request, we can advise that the department is a department of state and is legally and financially part of the Commonwealth. This means that the department was established by the Governor-General (as advised by the Prime Minister) and the Governor-General appointed ministers to administer the department. As noted above, the AAO lists the matters dealt with by each department of state and the legislation administered by each minister.

Accordingly, the relevant ministers appointed to the department by the Governor-General are responsible for administering the functions of the department and the department assists the relevant minister/s to undertake these functions.

More information about the operation of departments of state can be found on the Department of Finance's website: <https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/types-australian-government-bodies> as well as the Australian Parliament House website: https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government

Noting the information provided, we will take no further steps to process this part of your request and will consider this part as withdrawn unless you advise otherwise in any response to this notice.

Parts 2 and 3 - Practical refusal reason

I am writing to you under sections 24AA(1)(b), 24AA(2) and 24 of the FOI Act to notify you of my intention to refuse parts 2 and 3 of your request because I am satisfied that a practical refusal reason exists under subsection 24AA(1). This is because these parts of your request, as currently worded, do not satisfy the requirements of paragraph 15(2)(b) of the FOI Act. That is, they do not provide sufficient information to enable the department to identify the documents you are seeking access to.

I have consulted with relevant departmental officers regarding the terms of these parts of your request and whether the department holds any documents which may be captured by these parts of your request as currently worded.

I am asking you to clarify the scope of parts 2 and 3 of your request and provide us with more information about the documents you wish to access to enable us to identify them. If we are unable to reach a satisfactory agreement on the scope of these parts of your request, it is my intention to refuse your request as currently worded under section 24 of the FOI Act.

To assist you, I have set out the relevant sections of the FOI Act at **Attachment A**.

Suggestions for clarifying the scope of parts 2 and 3 of your request

To assist you to clarify parts 2 and 3 of the request, I suggest you rephrase the terms of these parts of the request to clearly identify the documents you would like to access. For example, it would be helpful if you could explain what 'COVID-19 vaccination mandate' you are referring to.

Depending on what you mean by a 'COVID-19 vaccination mandate', it appears as though these parts of your request might be more appropriately directed to the Department of Health so you may wish to consider making an FOI request to that department instead.

Action required from you under the FOI Act

Before I make a final decision on parts 2 and 3 of your request, you can submit a revised request.

Under the FOI Act, you must do one of the following things in the next 14 days:

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

Contact officer

I am the contact officer for your request. During the consultation period you can contact me to ask for help revising parts 2 and 3 of your request by emailing foi@dese.gov.au.

Your response will be expected by **8 November 2021**. If I do not receive a response from you, your request will be taken to be withdrawn by the operation of the FOI Act.

Further assistance

If you have any questions, please email foi@dese.gov.au.

Yours sincerely



Alison
Authorised decision maker
Department of Education, Skills and Employment
25 October 2021

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 an FOI request if the request does not satisfy the requirements in paragraph 15(2)(b) of the FOI Act. Paragraph 15(2)(b) of the FOI Act provides that, for a request to be valid, it must provide such information concerning the document requested as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it.

Section 24AA(2) of the FOI Act sets out certain factors which the department must consider when determining whether providing access in relation to a request would substantially and unreasonably divert resources. The department must specifically have regard to the resources that would have to be used for:

- identifying, locating or collating the documents
- deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for examining the document or consulting in relation to the request
- making a copy, or an edited copy, of the document
- notifying any interim or final decision on 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
- the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

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

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