



Australian Government
Department of Social Services

3 February 2015

Ms Vera Lystich

By email: foi+request-873-6a61e497@righttoknow.org.au

Dear Ms Lystich,

Freedom of Information (FOI) Request No. 14/15 – 101

1. I refer to your email received by the Department of Social Services (the Department) on 14 January 2015 requesting documents under the *Freedom of Information Act 1982* (the FOI Act).

2. In your email you sought access under the FOI Act to:

"Any documents, specifically legal opinions, reports or briefs, created by the Department relating to Australia's obligations under international law in relation to the proposed six-month waiting period for Newstart Allowance or Youth Allowance applicants under 30 years of age."

To expedite the processing of my request, I am willing to exclude the plain text of emails sent by Department staff and limit the scope of my request to documents created between 1 September 2013 and today's date.

3. In an email dated 15 January 2015, you provided the following clarification concerning the scope of your request:

To clarify, I am not seeking access to the report on this issue prepared by the Parliamentary Joint Committee on Human Rights and released in September 2014. The reason for this is that this particular report is publicly available.

4. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests and my decision regarding your request and the reasons for my decision are set out below.

DECISION AND REASONS FOR DECISION

5. Following consultation with the relevant line areas in the Department, I have identified one document as falling within the scope of your request.

6. The Department holds one legal advice obtained from an external law firm.

7. I have decided that this document is exempt from release under section 42 of the FOI Act.

8. In reaching my decision, I took the following material into account:

- your correspondence to the Department in relation to the particulars of your request;

- the document that fell within the scope of your request;
- the FOI Act (including section 42); and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act.

Section 42 of the FOI Act (legal professional privilege)

9. Subsection 42(1) of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
10. Accordingly, in deciding that the legal advice is exempt in full under section 42, I have considered whether:
 - a. there is a legal adviser-client relationship;
 - b. the communication was for the purpose of giving or receiving legal advice or for use or in connection with actual or anticipated litigation;
 - c. the advice given is independent; and
 - d. the advice given is confidential.
11. I am satisfied that the legal advice was a communication engaged in as part of a lawyer-client relationship between the Department and an external lawyer.
12. I am satisfied that the lawyers that assisted the Department in relation to the matters dealt with in the documents were at all times acting in the capacity of independent legal advisors.
13. I understand that the lawyers in question held, at all relevant times, a practising certificate.
14. I am satisfied that the document falling within the scope of this request relates to the legal position of the Department and therefore constitutes 'legal advice' as opposed to some other form of advice.
15. I am satisfied that the advice was provided by a lawyer acting independently and applying their independent judgement to the matters in issue.
16. I am satisfied that the information contained in the document constitutes confidential material prepared by a lawyer for the dominant purpose of providing legal advice to the Department.
17. Accordingly, I have decided that the advice would be privileged from production in legal proceedings on the grounds of legal professional privilege and as such, is exempt in full under section 42 of the FOI Act.

YOUR REVIEW RIGHTS

18. If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner Review of the decision. The Information Commissioner is of the view that it is usually better for a person to seek internal review of an agency decision before applying for an Information Commissioner review, as it may provide a more rapid resolution of your concerns.

Internal review

19. Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.
20. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner Review

21. Under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: <https://forms.business.gov.au/aba/oaic/foi-review/>
Email: enquiries@oaic.gov.au
Post: GPO Box 2999, Canberra ACT 2601
In person: Level 3, 175 Pitt Street, Sydney NSW

22. More information about Information Commissioner Review is available on the Office of the Australian Information Commissioner website at:

<http://www.oaic.gov.au/freedom-of-information/foi-reviews>

23. If you have any questions please do not hesitate to contact the FOI team at foi@dss.gov.au.

Yours sincerely,

Sam Willis
FOI Team
Public Law Branch
Department of Social Services