



22 August 2022

Our reference: LEX 69036

Mr Alex Pentland (Right to Know)

Only by email: foi+request-9163-98b5cca2@righttoknow.org.au

Dear Mr Pentland

Decision on your Freedom of Information Request

I refer to your request to the Department of Social Services (DSS) dated 21 July 2022, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

The documents I seek access to are in reference to a trial that the current Minister For Governments Services Bill Shorten has cancelled, as referred to here: <https://www.theguardian.com/australia-news/2022/jul/21/bill-shorten-intervenes-to-remove-birthing-parent-from-medical-forms-amid-criticism-in-daily-telegraph>

I seek access to the following:

- (a) The Ministerial Instructions from the Minister to cease the use of the forms;
- (b) Correspondence between the Minister's Office and the following Media Entities regarding the Form:
 - (i) News Corporation/The Daily Telegraph,
 - (ii) Sunrise,
 - (iii) The Guardian,
 - (iv) SBS,
 - (v) ABC; and
- (c) all documents presented to the Minister on the 20th of June, explaining the form (as referred to here: <https://twitter.com/billshortenmp/status/1549876339502485504>)

With amendment

I would like to substitute Sunrise for Nine's Today Show. I had intended to refer to Today at first but slipped and confused the two similar morning shows. I hope this is understandable and reasonable

On 2 August 2022, Services Australia (the agency) accepted partial transfer of your request from the Department of Social Services under section 16 of the FOI Act. The agency is processing the following parts of your request:

The documents I seek access to are in reference to a trial that the current Minister For Governments Services Bill Shorten has cancelled, as referred to here: <https://www.theguardian.com/australia-news/2022/jul/21/bill-shorten-intervenes-to-remove-birthing-parent-from-medical-forms-amid-criticism-in-daily-telegraph>

I seek access to the following:

- (a) The Ministerial Instructions from the Minister to cease the use of the forms; and
- (c) all documents presented to the Minister on the 20th of June, explaining the form (as referred to here: <https://twitter.com/billshortenmp/status/1549876339502485504>)

I note that where I refer to 'your request' in this decision, I am referring to that part of your request dated 21 July 2022 that was transferred to the agency on 2 August 2022.

My decision

Following searches by the relevant business area most likely to hold documents relevant to your request and consultation with that area, I have decided to refuse your request under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents you have requested and I am satisfied they do not exist within the agency. Please see Attachment A for the reasons for my decision.

You can ask for a review of our decision

If you disagree with any part of 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 the agency, or an external review by the Office of the Australian Information Commissioner. See Attachment B for more information about how to request a review.

Further assistance

If you have any questions please email freedomofinformation@servicesaustralia.gov.au.

Yours sincerely

Colette
Authorised FOI Decision Maker
Freedom of Information Team
Information Access Branch | Legal Services Division
Services Australia

REASONS FOR DECISION

What you requested

On 21 July 2022, you made a freedom of information request to DSS in the following terms:

The documents I seek access to are in reference to a trial that the current Minister For Governments Services Bill Shorten has cancelled, as referred to here: <https://www.theguardian.com/australia-news/2022/jul/21/bill-shorten-intervenes-to-remove-birthing-parent-from-medical-forms-amid-criticism-in-daily-telegraph>

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With amendment

I would like to substitute Sunrise for Nine's Today Show. I had intended to refer to Today at first but slipped and confused the two similar morning shows. I hope this is understandable and reasonable

On 2 August 2022, the agency accepted partial transfer of your request from DSS under section 16 of the FOI Act for the following parts of your request:

The documents I seek access to are in reference to a trial that the current Minister For Governments Services Bill Shorten has cancelled, as referred to here: <https://www.theguardian.com/australia-news/2022/jul/21/bill-shorten-intervenes-to-remove-birthing-parent-from-medical-forms-amid-criticism-in-daily-telegraph>

I seek access to the following:

- (a) The Ministerial Instructions from the Minister to cease the use of the forms; and
- (c) all documents presented to the Minister on the 20th of June, explaining the form (as referred to here: <https://twitter.com/billshortenmp/status/1549876339502485504>)

Interpretation of the scope of part (c) of your request

In relation to part (c) of your request, the agency has determined the date referenced (being 20 June 2022) to be a typographical error, having regard to the additional material you have referred to. Instead, we have taken this part of your request to be for:

- (c) all documents presented to the Minister on the 20th of July, explaining the form (as referred to here: <https://twitter.com/billshortenmp/status/1549876339502485504>)

What I took into account

In reaching my decision I took into account:

- your original request and amendment, both dated 21 July 2022
- consultations with agency officers about:
 - identifying and locating the documents sought
 - the nature of the documents (should they exist)
 - the agency's operating environment and functions
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines), and
- the FOI Act.

Reasons for my decisions

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

Section 24A of the FOI Act

Section 24A of the FOI Act permits an agency to refuse a request for access to a document if all reasonable steps have been taken to find the document, and the agency is satisfied the document cannot be found, or does not exist.

The Health and Veterans Division (Division) is the business area within the agency with appropriate subject matter expertise to conduct searches for documents relevant to your request.

The Division is responsible for the delivery of a number of health transformation initiatives, including the Life Event Redesign - Birth of a Child Project.

Following a search of the agency's electronic and hardcopy files, the Division did not identify any documents that fall within the scope of your request. The Division advised it did not provide any documents for presentation to the Minister on 20 July 2022, nor did it receive any written instructions from Minister Shorten to cease use of the forms referenced in your request.

On the basis of these searches, I am satisfied that in accordance with section 24A of the FOI Act:

1. all reasonable steps have been taken to locate the documents, and
2. the documents do not exist within the agency.

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information 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 Freedom of Information decision

If you still believe a decision is incorrect, the 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 the agency, 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 agency 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, or
- 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 the agency 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 agency's decision on your FOI request
- include your contact details, and
- set out your reasons for objecting to the agency'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.