



Australian Government

Department of Social Services

Our reference: FOI LEX 45661

Decision date: 26 October 2022

Applicant name: Jane McDonough

By email: foi+request-9412-7a6fd629@righttoknow.org.au

Dear Ms McDonough

Freedom of Information request FOI LEX 45661

1. I refer to your request received by the Department of Social Services (**the Department**) on 29 September 2022, in which you requested access under the *Freedom of Information Act 1982 (FOI Act)* to:

'copies of any briefings to/from the Secretary and Deputy Secretary regarding the historical incorrect payments to Research Administration Officers'

2. On 30 September 2022, the Department acknowledged your request and sought your agreement to the removal of the private email addresses, signatures and mobile numbers of all DSS staff, and the removal of the names of non-Senior Executive Service (**non-SES**) staff from any document provided in response to your request. You did not respond.

Decision

3. I have made a decision to refuse your request under section 24A of the FOI Act, as the documents you have asked for do not exist in the records of the Department.

Authority to make decision

4. I am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department in accordance with subsection 23(1) of the FOI Act.

Background

5. As stated above, the Department received your request on 29 September 2022. Your request was formally acknowledged on 30 September 2022 and you were advised that a response was due to you by 31 October 2022.

Material taken into account

6. When making my decision I considered the following:
 - a) the terms of your request; and
 - b) the types of information and documents that are in the Department's possession.
7. I also particularly considered the following provisions of the FOI Act:
 - a) section 3, which outlines the objects underpinning your right of access;



Australian Government

Department of Social Services

- b) sections 11 and 11A, which give the Australian community a legally enforceable right to access information held by the Government of the Commonwealth; and
 - c) section 24A of the FOI Act which states “*requests may be refused if documents cannot be found, do not exist or have not been received*”.
8. Full extracts of provisions of the FOI Act I have relied on are in **Appendix 1**.
9. I have also had regard to the FOI Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Reasons for decision

10. The Department undertook reasonable searches of its record management system, however no records within the scope of your request were identified.

Requests may be refused if documents cannot be found, do not exist or have not been received (section 24A)

11. Subsection 24A(1) of the FOI Act provides that:
- (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.*
12. I am satisfied that all reasonable steps have been taken to find information relevant to your request, having regard to:
- a) the terms of your request;
 - b) the types of documents that are in the possession of the Department;
 - c) the current and past file management systems and the practice of orderly destruction or removal of documents;
 - d) the Department's record management systems and practices;
 - e) the individuals and areas within the Department who may be able to assist with the location of the information you seek access to; and
 - f) the searches undertaken by the Department.
13. After conducting the searches mentioned above, the Department has been unable to identify any documents in our possession that are relevant to your request. I am satisfied that the documents do not exist in the Department's records.
14. For this reason, I am refusing your request for access to documents as described in your request, in accordance with section 24A of the FOI Act.

Your rights of review

15. Information about your rights to seek a review of this decision are at **Attachment A**.



Australian Government
Department of Social Services

16. Should you have any enquiries concerning this matter please do not hesitate to contact the FOI team by email at FOI@dss.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R Watt'.

R Watt
Director (a/g)
FOI Section
Legal Services Group

26 October 2022



Schedule of relevant provisions used in making this decision

Excerpts from the *Freedom of Information Act 1982* (Cth)

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

(2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:



Australian Government

Department of Social Services

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Appendix 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.



24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (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.

Document not received as required by contract

- (1) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
 - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
 - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;
 - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.



Australian Government

Department of Social Services

- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
(see section 11A).