



22 March 2018

Our reference: LEX 35004

Mr Justin Warren

Only by email: [foi+request-4381-a5de6590@righttoknow.org.au](mailto:foi+request-4381-a5de6590@righttoknow.org.au)

Dear Mr Warren

### Decision on your Freedom of Information request

I refer to your revised request, dated 11 March 2018 and received by the Department of Human Services (**department**) on the same date, for access under the *Freedom of Information Act 1982 (FOI Act)* made in the following terms:

1. Any and all IPS registers that contain the title of operational documents contained within the scope of my original request [all documents on the [operational.humanservices.gov.au](http://operational.humanservices.gov.au) website currently marked 'potentially FOI exempt'] to which an exception applies and the reason(s) it was not published under the IPS, as per [13.72] of the FOI Guidelines.
2. All documents contained within the scope of my original request [all documents on the [operational.humanservices.gov.au](http://operational.humanservices.gov.au) website currently marked 'potentially FOI exempt'] whose title is NOT contained within the IPS registers of point 1.

The underlying assumption here is that the documents in point 2 do not exist in IPS registers because no exception applies to them and they should therefore be published under the IPS.

### My decision

Section 24(1) of the FOI Act provides that if, after a consultation process, an agency is satisfied that a practical refusal reason still exists, the agency may refuse to give access to the document in accordance with the request

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to an FOI request if the work involved in processing the request would substantially and unreasonably divert the resources of the department from its other operations.

I have decided to refuse your request under section 24(1) of the FOI Act because, following the request consultation process pursuant to section 24AB of the FOI Act, a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied that section 24AA(1)(a)(i) of the FOI Act applies, in that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

### **You can ask for a review of my decision**

If you disagree with my 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 department, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment B** for more information about how arrange a review.

### **Further assistance**

If you have any questions please email [FOI.LEGAL.TEAM@humanservices.gov.au](mailto:FOI.LEGAL.TEAM@humanservices.gov.au)

Yours sincerely

### **Alice**

Authorised FOI Decision Maker  
Freedom of Information Team  
FOI and Litigation Branch | Legal Services Division  
Department of Human Services



**Attachment A**

**REASONS FOR DECISION**

**Your request**

On 16 February 2018, you made a request for access under the FOI Act in the following terms:

A copy of all documents on the operational.humanservices.gov.au website currently marked 'potentially FOI exempt' with boilerplate text of the following form:

The guideline you have requested is potentially FOI exempt.

You have a right to apply for the document through FOI legislation.

You can request a copy from the department's Information Publication Scheme by:

sending an email to [freedomofinformation@humanservices.gov.au](mailto:freedomofinformation@humanservices.gov.au)  
or writing to us at:  
Freedom of Information  
FOI and Information Release Branch  
PO Box 7820  
Canberra Mail Centre ACT 2610

On 2 March 2018, I wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act on the basis that a practical refusal reason existed. The quantity of documents within the scope of your request was voluminous, hence processing your request would substantially and unreasonably divert the resources of the department from its other operations.

I gave you an opportunity to consult with the department to revise your request so as to remove the practical refusal reason. Specifically, I suggested that you may wish to consider narrowing the scope of your request to a specific operational process or policy.

On 11 March 2018, you revised your request to the following terms:

1. Any and all IPS registers that contain the title of operational documents contained within the scope of my original request [all documents on the operational.humanservices.gov.au website currently marked 'potentially FOI exempt'] to which an exception applies and the reason(s) it was not published under the IPS, as per [13.72] of the FOI Guidelines.
2. All documents contained within the scope of my original request [all documents on the operational.humanservices.gov.au website currently marked 'potentially FOI exempt'] whose title is NOT contained within the IPS registers of point 1.

The underlying assumption here is that the documents in point 2 do not exist in IPS registers because no exception applies to them and they should therefore be published under the IPS.

## What I took into account

In reaching my decision I took into account:

- your original request dated 16 February 2018 and your revised request dated 11 March 2018;
- other correspondence between the department and you in relation to this request;
- the documents that would fall within the scope of your request;
- consultations with departmental officers about:
  - the nature of the documents; and
  - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**);
- the FOI Act.

## Reasons for my decisions

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

Following the request consultation process outlined above, in accordance with section 24AB of the FOI Act, I am satisfied that a practical refusal reason still exists in that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations. The reasons for my decision, including consideration of the factors I am required to take into account in section 24AA(2), are outlined below.

### *Practical refusal reason*

Section 24AA of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

The word 'substantial' has previously been interpreted to mean severe, of some gravity, large or weighty or of considerable amount, real or of substance and not insubstantial or of nominal consequence. The use of the word 'unreasonable' has been interpreted to mean that a weighing of all relevant considerations is needed, including the extent of the resources needed to meet the request.

In determining whether processing the request would substantially and unreasonably divert the department's resources, section 24AA(2) requires me to have regard to the resources that would have to be used for the following:

- identifying, locating or collating the documents within the filing system of the department;
- deciding whether to grant, refuse or defer access to a document including resources used for examining the document and consulting with any person or body in relation to the request;
- making a copy or an edited copy of the document; and
- notifying of any decision on the request.

In accordance with section 24AA(3), I did not consider your reasons for requesting access to the documents.

*Why your request is substantial*

In making my decision, I estimated that over 200 hours of search and retrieval time would be required to process the part of your request for 'any and all IPS registers that contain the title of ... all documents on the operational.humanservices.gov.au website currently marked 'potentially FOI exempt' to which an exception applies and the reason(s) it was not published'. This excludes the time required to examine the documents and apply redactions, where necessary.

The operational.humanservices.gov.au website contains the department's operational information documents (**Operational Blueprints**), which are published (i.e. publicly available) by the department under its Information Publication Scheme (**IPS**) as required under the FOI Act. It also identifies those Operational Blueprints that are not publicly available.

I consulted the department's Business Processing Branch (**Branch**) in relation to your request. As advised to you in the consultation letter dated 2 March 2018, the Branch is responsible for authoring, editing and publishing operational information for staff and customers in collaboration with responsible business areas across the department.

The Branch advised that there is no single document that lists the titles of Operational Blueprints currently marked 'potentially FOI exempt' on the operational.humanservices.gov.au website, or the reasons why they have been marked as such.

Whilst the operational.humanservices.gov.au website has a search function for Operational Blueprints marked 'potentially FOI exempt' (and which identifies 3,000 documents marked as such), it does not identify the specific provision under the FOI Act that contains the applicable exemption. Documents that contain this information would be held by the business areas that are responsible for each of the Operational Blueprints.

I am advised by the Branch that there are over 200 business areas that are responsible for Operational Blueprints. This means to process your request, the department would likely have to consult all of these 200 business areas. Allowing a conservative estimate of 1 hour per business area (noting that each business area may be responsible for several Operational Blueprints and may therefore take more than an hour to search for the relevant documents), over 200 hours of search and retrieval time would be required to locate the documents you are seeking in relation to this part of your request. This does not include the time that would be required to review and consider any exemptions that may apply to the documents.

In my consultation letter, I suggested that you consider narrowing your request to documents containing operational information regarding one particular business area or topic. However, your revised request did not do so.

This means that it would be necessary to consult all business areas within the department that have responsibility for Operational Blueprints in order to identify whether they hold the documents you have requested. This is because the department does not maintain a separate register that lists the Operational Blueprints that are publicly available and those that are not publicly available. Therefore, for the reasons given above, processing this part of your request would result in a significant diversion of departmental resources.

### *Why your request is unreasonable*

For the purposes of deciding whether your request would unreasonably divert the resources of the department from its other operations, I considered whether the substantial resource burden would be unreasonable, having regard to the fact that one departmental staff member would be required to spend over five weeks of time to process the part of your request for 'any and all IPS registers that contain the title of ... all documents on the operational.humanservices.gov.au website currently marked 'potentially FOI exempt'.

The department receives approximately 300-400 FOI requests per month, the majority of which are requests from people seeking their own information. I am satisfied that the processing of this part of your request would divert departmental resources from the processing of its other FOI requests.

In making this finding, I have given weight to the significant possibility that a narrowed scope of request could satisfactorily meet your legitimate interest in seeking access to documents concerning operational information of the department.

Therefore a practical refusal reason still exists in relation to this part of your request.

Paragraph 3.126 of the Guidelines provides that the department cannot undertake a consultation process in relation to all of the requested documents and then, if the applicant does not withdraw or revise the request, unilaterally decide to give access under the FOI Act to some of the requested documents and refuse access to others on practical refusal grounds. In *'AR' and Australian Federal Police* [2013] AICmr 80 (**AR**), Freedom of Information Commissioner Popple held that:

The FOI Act does not allow an agency to process an FOI request by refusing access to some documents on the basis of practical refusal, then processing the remaining documents.

I consider that paragraph 3.126 of the Guidelines applies to your request, on the basis that:

- I undertook a consultation process in relation to all of the requested documents as a practical refusal reason existed; and
- one part of your revised request still gives rise to the practical refusal reason.

*AR* is analogous to your request in that the department is not able to refuse access to some documents that are within the scope of the first part of your request on the basis of a practical refusal reason, then process the remaining parts of your request. Accordingly, I have decided to refuse your request in full, on the basis that a practical refusal reason exists.

### *Section 8(2)(j) of the FOI Act and paragraph 13.72 of the Guidelines*

In your correspondence, you suggested that the department has not complied with its obligations under section 8(2)(j) of the FOI Act (IPS) by not publishing all of its operational information. You also referred to paragraph 13.72 of the Guidelines, which states:

Where information is not published because an exception applies, agencies may record this in an IPS information register, including the title of the document to which an exception applies and the reason it was not published under the IPS (see [13.20] above on information registers). Capturing this information may help an agency if it needs to respond to any complaints to the Information Commissioner about its IPS compliance.

For those Operational Blueprints that have been marked as 'potentially FOI exempt', you contended that the department has claimed 'some form of FOI exemption ... without providing any details of what that exemption is'.

Although your above contentions were not factors that I have taken into account in my decision to refuse your request under section 24(1) of the FOI Act, I have taken this opportunity to address these issues.

Section 8(2)(j) of the FOI Act is subject to section 8C of the FOI Act, which provides that an agency is not required to publish exempt matter. In my view, those Operational Blueprints that are not publicly available on the operational.humanservices.gov.au website contain exempt matter (which is why they have been marked as potentially FOI exempt'), which means that section 8C of the FOI Act applies so that the department is not required to publish them.

The use of the word 'may record' in paragraph 13.72 of the Guidelines means that it is not mandatory for agencies to comply with those provisions. Nevertheless, the department's operational.humanservices.gov.au website is broadly consistent with paragraph 13.72 of the Guidelines, on the basis that it identifies the title of the Operational Blueprint that is not published and states that is not published because it is potentially exempt under the FOI Act.

#### *Conclusion*

In summary, I am satisfied that the work involved in processing part of your request would substantially and unreasonably divert the resources of the department from its other operations, namely the processing of other FOI requests and the delivery of social services to all Australians more broadly.

I have found that a practical refusal reason still exists in relation to your request for access to the documents. Accordingly I have decided to refuse your request under section 24(1) of the FOI Act.



## Attachment B

### 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 an 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 *Freedom of Information Act 1982* (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 Department of Human Services (the department); 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 departmental 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 department 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](http://www.oaic.gov.au)  
Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001  
Email: [enquiries@oaic.gov.au](mailto: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](http://www.oaic.gov.au).
- If you have one, you should include with your application a copy of the Department of Human Services' decision on your FOI request.
- Include your contact details.
- Set out your reasons for objecting to the department's decision.

**Complaints to the Information Commissioner and Commonwealth Ombudsman**

***Information Commissioner***

You may 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](http://www.oaic.gov.au)

***Commonwealth Ombudsman***

You may also 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](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.