

GPO Box 2934 Adelaide SA 5001

Mr Keith Owen

Our reference: 1-F4FEN54

17 July 2018

Decision regarding your Freedom of Information (FOI) Internal Review request

Dear Mr Owen

I refer to your application for internal review pursuant to section 54B of the *Freedom of Information Act 1982 (FOI Act)*, in respect of FOI decision 1-EF0LCXY issued by J Felton of our office on 8 June 2018.

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

Your request

By way of email dated 17 June 2018, you have requested an internal review of the decision. You have provided the following information in requesting the internal review:

I apply to access any reports of misconduct by any ATO Prosecutor for failing to adhere to the Model Litigant Directions during the period 01/06/2017 to 14/06/2018.

I note the period you requested documents was between 01/06/2017 and 14/06/2018. However, you submitted your request on 14 May 2018. The FOI Act does not enable applicants to submit prospective applications. This was likely a typographical error on your behalf; it should have likely read 14/05/2018. Nevertheless, the statement in the original decision letter is factually correct.

My decision in relation to your internal review application

I have decided to affirm the original decision made by J Felton.

In coming to my internal review decision I have referred to the following:

- Your original FOI application;
- The notice of decision of your FOI application;
- Your internal review application (email dated 5 June 2018);
- The FOI Act;
- FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC).

Please see attached my statement of reasons as to why I am affirming the original FOI decision.

Your rights of review

If you are unhappy with my decision, you can request an independent review by the Australian Information Commissioner.

A request for an independent review by the Australian Information Commissioner needs to:

- be sent within 60 days of being notified of my decision
- include a copy of this notice
- include an address where notices can be sent (e.g. your email address), and
- be sent to:

Email at enquiries@oaic.gov.au or

Mail to: OAIC
GPO Box 5218
Sydney NSW 2001

For further details regarding the Australian Information Commissioner visit www.oaic.gov.au

Complaints

Any complaint about the processing of your FOI request can be forwarded to the Information Commissioner. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

- Online: https://forms.business.gov.au/aba/landing.htm?formCode=ICCA_1
- Email: enquiries@oaic.gov.au
- Mail to: GPO Box 5218, Sydney NSW 2001
- In person: Level 3, 175 Pitt Street, Sydney NSW

The Information Commissioner can be contacted on 1300 363 992 for the cost of a local call.

Yours sincerely



R Durnan
General Counsel
Australian Taxation Office

Statement of Reasons

Decision

I affirm the original decision of J Felton (our reference: 1-EF0LCXY), whereby access was refused in full pursuant to section 24A of the FOI Act.

Reasons for Decision

Section 11 of the FOI Act provides that you have a legally enforceable right to obtain access to a document of the ATO in accordance with the FOI Act. Under section 11A of the FOI Act, the ATO must generally give you access to a document within the scope of your request.

However, access to a document or part of a document cannot be provided where an exemption or conditional exemption applies, or if a practical refusal reason exists (see section 24AA of the FOI Act). The ATO may also refuse a request for documents if the documents cannot be found or do not exist (section 24A).

Your original request

Your original FOI request was submitted to us by way of email dated 8 June 2018, where you requested the following information:

I apply to access any reports of misconduct by any ATO Prosecutor for failing to adhere to the Model Litigant Directions during the period 01/06/2017 to 14/06/2018.

I have read and consider the decision made by J Felton to refuse access to the information requested pursuant to section 24A of the FOI Act is correct and I affirm it in full.

Consideration of the Relevant FOI exemptions

Section 24A – documents cannot be found, do not exist or have not been received

I have considered the information provided to you by J Felton in the notice of decision whereby access was refused under section 24A. After consultation with the relevant business area, no documents were identified that fall into the scope of your request.

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

In the decision made by J Felton you were provided with an explanation about the documents sought; the ATO does not hold any report that an ATO prosecutor has failed to adhere to the model litigant directions in the period between 1 June 2017 and the date of the decision letter; 8 June 2018.

I affirm the decision made by J Felton in that the relevant business service line has failed to locate any documents that fall within the scope of your request, therefore access is refused pursuant to section 24A on the grounds that the documents cannot be found or do not exist.