



Paul Daivdson

Our reference: 1-HKFJMPV

18 April 2019

Dear Paul Daivdson

Your Freedom of Information (FOI) Request

I refer to your request made under the *Freedom of Information Act 1982* (FOI Act) and received by the Australian Taxation Office (ATO) on 8 April 2019.

Authority

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

Requested documents

You requested access to the following:

"I would like to know how many concerns tax office received in 2015, 2016 and 2017 financial years in relation to tax evasion from general public (via phone, online or mail)?

I would also like to know the status of the below in numbers.

- 1) *How many cases did you review?*
- 2) *How many cases did you take further investigations?*
- 3) *How many cases did you formally take action?"*

Decision

I emphasise at the outset that the FOI Act gives a right of access to *documents*, not information, and that an agency is not required to create new documents to satisfy an FOI request.

I have granted access in part to your request pursuant to section 17 of the FOI Act. The information I am able to provide is as follows:

How many tax evasion referrals did the ATO receive from the general public for the 2015, 2016 and 2017 financial years?

2015 financial year - 41,579

2016 financial year – 44,035

2017 financial year – 46,389

How many cases did the ATO review?

The Tax Evasion Referral Centre records and reviews all concerns received by the ATO and then refers them on to the relevant compliance areas within the ATO. That is, the ATO reviewed all 132,003 referrals received across the 2015, 2016 and 2017 financial years.

Material taken into account

In reaching my decision, I have taken into account the following documentary evidence:

- the terms of your request;
- the FOI Act;
- advice from the business service lines from which information has been sought;
- the FOI Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Reasons for decision

Section 17 – Requests involving use of computers etc.

You have requested “information” rather than “documents”.

The FOI Act provides for a right of access to documents rather than information. However, where the agency receiving an FOI request for information can produce a document containing information an FOI applicant seeks, by extracting information from a computer system, without unreasonably diverting resources to do so, section 17 of the FOI Act provides a right of access to such a document.

I have consulted with the relevant business service lines of the ATO to identify whether the information you have sought exists in a discrete document, or exists in a reasonably accessible form in the ATO’s systems such that it is retrievable to answer your questions. I have been advised by officers within the relevant business service lines that data is recorded for only some of the factors for which you seek information. Consequently I have granted access in part to the information you have requested under section 17 of the FOI Act (by including that information above, in this letter) because only some of the information is reasonably capable of being retrieved and reduced to a discrete written form.

I have undertaken reasonable searches to determine whether the ATO collects the data you have requested in a discrete form, or can easily extrapolate it from the ATO’s systems. For further information about what constitutes a reasonable search for documents, please see Part 3 of the FOI Guidelines (the Guidelines) issued by the Office of the Australian Information Commissioner (OAIC) under s93A of the FOI Act, which are available at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

As I have already pointed out, the FOI Act provides access to “documents”, rather than “information”. Clause 1.29 of the Guidelines states:

The right of access enshrined in the FOI Act applies to “documents”. This term is defined in s4(1) to include maps, photographs, and any article from which sounds, images or writing are capable of being reproduced (for example, emails). There is no general obligation on agencies to reduce information to written documentary form in order to facilitate an FOI request, except in relation to information that is stored on a computer tape or disk (s17).

The Full Federal Court stated in *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67 at paragraph 44 that:

Section 17(1)(c)(i) is directed at ensuring that an agency will not be obliged to produce a document unless the effective and comprehensive means of doing so are ordinarily available to it for the specified purpose. In that context, the computer or other equipment ordinarily available for the specified purpose must be capable of functioning independently to collate or retrieve stored information and to produce the requested document.

The information you seek under the first paragraph and point (1) of your request is of the type captured by the ATO’s systems. However, the more detailed information you seek at points (2) and (3) is recorded at the level of individual taxpayer records where investigations and outcomes arising from tax evasion referrals would be recorded, alongside records of other information sources and other compliance action in relation to each particular taxpayer. This information cannot be readily retrieved and collated at a statistical level.

ATO officers would need to manually identify, retrieve and collate information on a case by case basis. The manual identification, analysis and collation of this information from individual taxpayer records would amount to an unreasonable diversion of the ATO’s resources which, in accordance with subsection 17(2) of the FOI Act, the ATO is not required to undertake.

Consequently, I refuse access to the information you have sought at points (2) and (3) of your request, as provided by section 17 of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the ATO for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, quoting our reference number at the top of this letter, and be lodged in one of the following ways:

email: **FOI@ato.gov.au**

post: Freedom of Information, General Counsel, Australian Taxation Office,
GPO Box 4889, Sydney NSW 2001

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. If you have not been informed of the outcome of the review within that time, you may apply to the Australian Information Commissioner under section 54L of the FOI Act.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian 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 5218, Sydney NSW 2001
in person: Level 3, 175 Pitt Street, Sydney NSW

Your application must include a copy of this letter (and any attachments), an address where notices can be sent to you (eg. your email address) and particulars of the basis on which you dispute the decision.

Visit the Australian Information Commissioner website, www.oaic.gov.au/freedom-of-information/foi-reviews, for more information about Information Commissioner review.

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
post: 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.

For more information

If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for Natasha Bryan on extension **35910**.

Yours sincerely

N Bryan
General Counsel
Australian Taxation Office