



Gayle
c/- Right to Know website

Our reference: 1-NYO6EZ3
Contact officer: L Lu
Email: foi@ato.gov.au

22 December 2020

Decision regarding your Freedom of Information (FOI) internal review request

Dear Gayle,

I refer to your request received on 4 December 2020, seeking an internal review of the decision dated 30 November 2020 ('the original decision').

I am an officer authorised under subsection 23(1) of the *Freedom of Information Act 1982* (**FOI Act**) to make decisions in relation to FOI requests.

Background

On 29 October 2020 you requested the following documents, over the period 1 March 2019 to 29 October 2020 (inclusive):

"For the above-mentioned period, please provide documents showing the following information for all applications submitted and processed by the ATO for early access to super on "compassionate grounds", with a reason 'medical treatment and medical transport for you or your dependant':

1. The total number of applications received by the ATO showing a breakdown for each of the different types of 'medical treatment' and the time (in days) it took the ATO to finalise each of these applications, the status of each of these applications at 29 October 2020 eg 'Approved' etc.

2. The total number of applications received and then declined/rejected by the ATO because the Medical Provider's Treatment Plan and Quote were not submitted with the application on separate provider letterheads eg they were provided on a single provider letterhead and not two or more provider letterheads.

3. The total number of applications withdrawn by the applicant/customer showing the customers reasons for each of these withdrawals (if available).

Please note this is not a request for applicants/customers applications to the ATO.

In addition, please send the public/external link to all ATO's policies, guidelines and procedure manuals the ATO uses to make decisions on these types of applications."

On 30 November 2020, the original decision maker sent you a letter refusing access to your request in full under section 24A of the FOI Act. The original decision maker deemed that the ATO had taken all reasonable steps to locate documents of the kind you requested and that no such documents exist.

On 4 December 2020, you requested a review of the original decision on the basis that it was "...hard to believe the ATO does not hold any documents containing the information (you) requested...".

My internal review decision

I have decided to affirm the original decision.

I have examined the records of searches arranged by the original decision maker and undertaken by the relevant ATO business line and I am satisfied that the documents do not exist.

Material taken into account

I have taken the following material into account in making my decision:

- Your original FOI request;
- Your internal review request;
- The FOI Act;
- Information provided by relevant ATO officers; and
- The guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Reasons for decision

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 cannot be found or does not exist.

The original decision maker arranged for reasonable searches to be conducted by the relevant business line and a document containing all the information to satisfy the scope of your request was found to not exist.

In response to your request for an internal review of the original decision, I note that further searches were conducted and the relevant business line again confirmed that documents falling within the scope of your request do not exist. Accordingly, on internal review I must refuse you access to the documents pursuant to section 24A of the FOI Act.

Section 17 – Requests involving the use of computers etc.

For completeness, I note that subsection 17(1) of the FOI Act provides that where a request is made for information that is not available in discrete form in written documents of an agency, and the agency could produce a written document containing the information in discrete form by the use of a computer (or other equipment ordinarily available for retrieving and collating stored information), the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information. Subsection 17(2) of the FOI Act provides that agencies are not required to comply with subsection 17(1) where doing so would substantially and unreasonably divert the resources of the agency from its other operations.

In considering your request, enquiries were also made to determine whether it was possible to access and collate the information you are seeking. In response to these enquiries, the relevant business line advised that each application for compassionate release of superannuation submitted in the time period requested would need to be independently

reviewed. The applications which would need to be reviewed numbered in the thousands. Accordingly, in order to satisfy your request, the staff of the relevant ATO business line would need to be diverted from their ordinary duties in order to access the information you are seeking and to then manually provide the information to an FOI decision maker to collate that information in a written document. This process would substantially and unreasonably divert the resources of the ATO from its other operations.

For the reasons outlined above, I am satisfied that the documents do not exist and that the ATO is not required to produce discrete documents containing the information requested pursuant to subsection 17(2) of the FOI Act.

Your rights of review

If you are dissatisfied with my decision, 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/smartforms/servlet/SmartForm.html?formCode=ICR_10
email: foidr@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001

Visit the Australian Information Commissioner website, <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>, for more information about the 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/smartforms/servlet/SmartForm.html?formCode=ICCA_1
email: foidr@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001

The Information Commissioner can be contacted on 1300 363 992.

For more information

If you wish to discuss this decision, please email foi@ato.gov.au.

Yours sincerely

L Lu
Senior Lawyer
General Counsel
Australian Taxation Office