



Our reference: 1-PMJUMS7

2 July 2021

Decision regarding Freedom of Information (FOI) request

Dear Mr Morrison-Francis,

I refer to your request for documents under the *Freedom of Information Act 1982 (FOI Act)*, received in the ATO on 4 June 2021. I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

Your request

The wording of your request asks for the following documents:

'In complaint letter responses from Commonwealth Superannuation Corporation is advising the following

"We understand that this may be frustrating for you. Please be assured that we are endeavouring to update our systems as quickly as possible so we can withhold amounts for tax in accordance with the Decision. We hold an exemption for this financial year."

Please provide a copy of all documents that shows that the Commissioner of Taxation or other authority has provided Commonwealth superannuation with an exception to comply with the Douglas ruling in relation to Military Super for the financial years.'

Summary of my decision in relation to your FOI application

I am satisfied that all reasonable steps have been taken to find documents within the scope of your request, and that no such documents meeting the description of what you have asked for can be found or exist. As such, I must refuse your request for access to documents pursuant to section 24A of the FOI Act.

Reasons for Decision

Section 24A – documents that cannot be found or do not exist

Subsection 24A(1) of the FOI Act provides:

- (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.

The Office of the Australian Information Commissioner (**OAIC**) has issued guidelines pursuant to section 93A of the FOI Act. Agencies must have regard to these guidelines when processing requests under the FOI Act. At paragraphs 3.88-3.93 of the guidelines, the OAIC provides guidance as to the meaning of the term 'all reasonable steps' in subsection 24A(1).

In line with the OAIC's guidance, I have taken into account the subject matter of your request and in this case, consulted with colleagues in the 'Superannuation & Employer Obligations' (**SEO**) business and service line within the ATO. SEO are the first point of contact for tax and superannuation interactions between individuals, employers and super funds, and therefore the appropriate business line to conduct searches for documents of the kind you have requested.

SEO advised me that they have checked all available systems and that no documents showing *'the Commissioner of Taxation or other authority has provided Commonwealth superannuation with an exception to comply with the Douglas ruling in relation to Military Super for the financial years'* (as per the wording of your request), can be found or exist.

For completeness, the business line did however advise me of the following information, which I hope may be of assistance. I understand that:

- On 11 February 2021, the ATO advised the Commonwealth Superannuation Corporation (**CSC**) that "as soon as practicable (and no later than from 1 July 2021), you should begin to apply the rates set out in *Schedule 12 – Tax table for superannuation lump sums* to invalidity payments you make this year and in future years to members of the Military Superannuation Benefits Scheme, and the Defence Force Retirement and Death Benefits Scheme, where invalidity benefit payments are paid under pensions that commenced on or after 20 September 2007."
- Also on 11 February 2021, the Commissioner of Taxation provided an exemption, to CSC, from issuing PAYG payment summaries that are required under section 16-165 of Schedule 1 to the *Taxation Administration Act 1953* within 14 days, in respect of certain superannuation lump sum payments made to members of specified superannuation schemes. Instead, the CSC will be required to issue a single PAYG payment summary within 14 days after the end of the financial year to the member covering total superannuation lump sum payments made, total tax withheld and any other reportable components for the financial year.

On the wording of your request, however, I am satisfied that all reasonable steps have been taken to find documents within the scope of what you have asked for (being *'documents that shows that the Commissioner of Taxation or other authority has provided Commonwealth superannuation with an exception to comply with the Douglas ruling in relation to Military Super for the financial years'*), and that no such documents can be found or exist.

I must therefore refuse your request for access to documents pursuant to section 24A of the FOI Act.

In reaching my decision, I have relied on the following evidence and authorities:

- Scope of your request;
- The FOI Act;
- Consultation with the relevant business and service lines within the ATO;
- FOI Guidelines issued by the OAIC.

Your rights of review

If you are unhappy with my decision, you can either request an internal review or request an independent review by the Australian Information Commissioner. You can also apply to the Australian Information Commissioner after an internal review has been conducted. A request for an internal review needs to:

- be in writing
- be sent to us within 30 days of being notified of my decision, and
- be sent via:
 - email at foi@ato.gov.au, or
 - mail to:
Australian Taxation Office
GPO Box 2934
ADELAIDE SA 5001

The internal review will be done by an officer who did not make the initial decision. An application for review by the Australian 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 OAIC website, <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>, for more information about Australian 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.

Yours sincerely

M Tonglee
A/g Senior Lawyer
General Counsel
Australian Taxation Office