



Our reference: 1-Q4GO9ZI

13 August 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 17 July 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:

'It has been advised by CSC that the Australian Taxation Office has advice's to CSC was to withhold veterans FY21 taxation documents due to an "incorrect formulas".

Please provide all documents your agency holds in relation to this advice as well as meeting notes, emails and recorded calls of any follow up to this advice between the ATO and CSC.

I am asking that all names regardless of position in the APS are NOT redacted and duplicate documents are not required however draft documents are.

The period this search relates to is 01.01.20 to the date of this request.'

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 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 relating to the ATO having advised '*CSC was to withhold veterans FY21 taxation documents due to an "incorrect formulas"*' can be found or exist. SEO has advised that advice has not been provided to CSC to withhold veteran 2020-2021 financial year taxation documents. The ATO's position has been to get the right information to affected veterans in the shortest amount of time possible to enable correct lodgements.

On the wording of your request, I am satisfied that all reasonable steps have been taken to find documents within the scope of what you have asked for (being '*all documents [the ATO] holds in relation to [the] advice as well as meeting notes, emails and recorded calls of any follow up to [the] advice between the ATO and CSC*'), 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 4889
SYDNEY NSW 2000

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