

CHEEVER, Ben

From: THOMPSON, Duncan
Sent: Thursday, 17 July 2014 2:18 PM
To: CARLTON, Ross
Cc: FLETCHER, James
Subject: RE: New FOI Request - [REDACTED] [DLM=Sensitive:Legal]

Hi Ross

I would be grateful if you could provide confirmation of the following by **18 July** so that we are able to continue processing the applicant's request:

1. In relation to Part 1 of the applicant's request:
 - a. You can provide a document(s) which gives the year of birth of all current ongoing employees working in the Agency's national office; or
 - b. If the information is not available in discrete form in written documents of the agency, whether for the purposes of s 17 of the FOI Act, you could produce (ie, through the use of a computer) a written document that provides this information.
 - c. If you need to produce a document for the purposes of s 17 of the FOI Act, how much time is required to produce that document?

Section 17 of the FOI Act stipulates that being able to produce a written document for these purposes should only require the use of ordinarily available equipment and resources such as a computer (which is able to retrieve or collate stored information) without substantially and unreasonably diverting the agency's resources.

2. In relation to Part 2 of the applicant's request, could you confirm that you mean **section 10A** of the *Public Service Act 1999*?

Thanks

Duncan

Duncan Thompson
Senior Lawyer
Legal and Governance Branch
National Disability Insurance Agency

T 02 6146 6017

[REDACTED] s. 47F

E Duncan.Thompson@ndis.gov.au

From: THOMPSON, Duncan
Sent: Tuesday, 15 July 2014 10:14 AM
To: CARLTON, Ross
Subject: RE: New FOI Request - [REDACTED] [DLM=Sensitive:Legal]

Good morning Ross

Thanks for confirming this in relation to part 2 of the applicant's request.

In relation to part 1 of the applicant's request, we received further particulars from the applicant yesterday.

The applicant has stated that he only requires:

'The year of birth of all permanent employees of your (the Agency's) national office.'

We think the only reasonable inference that can be drawn from this statement, and in other comments in his response, is that it covers only current ongoing employees (and not past employees) of the Agency who work in the national office (and not in the trial site).

The applicant also made clear that he does not require:

'month or day of birth, name or other personal identifier or dates of hire.'

Please let me know if you require any further particulars.

Regards
Duncan

From: CARLTON, Ross
Sent: Monday, 14 July 2014 10:50 PM
To: THOMPSON, Duncan
Subject: RE: New FOI Request - [REDACTED] [DLM=Sensitive:Legal]

Hi Duncan

In regards to the second part of the question - evidence of attempts made to ensure that the individuals hired were unemployed (as opposed to individuals who already had employment and were changing jobs).

No attempts are made to ensure that the individuals hired are unemployed.

We are required under the Public Service Act, Section 10, to ensure that any recruitment decision relating to engagement or promotion is based on merit.

Regards

Ross

From: THOMPSON, Duncan
Sent: Friday, 11 July 2014 4:22 PM
To: CARLTON, Ross
Subject: RE: New FOI Request - [REDACTED] [DLM=Sensitive:Legal]

Thanks Ross – I understand. That part of the applicant's request does not meet requirements for a request for purposes of the FOI Act (s 15(2)(b) of the FOI Act).

If you require additional information in relation to the second part of the applicant's request could you please let me know by Monday?

I intend notifying the applicant that we require more particulars regarding the first part of his request (s. 15(3) of the FOI Act).

Regards
Duncan

02 6146 6017

From: CARLTON, Ross
Sent: Friday, 11 July 2014 12:43 PM
To: THOMPSON, Duncan
Subject: RE: New FOI Request - [Section 11C] [DLM=Sensitive:Legal]

Hi Duncan

I need some additional information to provide you with the correct information.

- When the FOI asks 'the year of birth of all employees hired by the NDIA's Geelong office' is this referring to Little Malop street trial site, the National Office or both.
- Hired by – as HR is in the National Office – does this have broader application to all NDIA staff. If so, is it only the staff recruited since the function transferred to Geelong.
- Can we also confirm if this means all active staff and not those who have ceased to be employed

Happy to discuss.

Regards

Ross

From: THOMPSON, Duncan
Sent: Thursday, 10 July 2014 12:30 PM
To: CARLTON, Ross
Cc: FLETCHER, James [Section 11C]
Subject: New FOI Request - [Section 11C] [DLM=Sensitive:Legal]
Importance: High

Hello Ross

I have been advised that you are the appropriate contact point for a freedom of information (FOI) request the NDIA has received. Please let me know if this is not the case (and direct me to the appropriate contact if possible).

Purpose of email

To seek your assistance by **14 July 2014** regarding a freedom of information request (FOI) the NDIA has received.

Background

We have received an FOI request from [Section 11C] (applicant) for data in relation to:

- the year of birth of all employees hired by the NDIA's Geelong office; and,
- evidence of attempts made to ensure that the individuals hired were unemployed (as opposed to individuals who already had employment and were changing jobs).

A copy of the applicant's full request is **attached** for background.

Under the FOI Act, the NDIA must grant access to documents requested under FOI, unless certain legal exemptions apply.

In relation to the first part of the request, the following may serve as a useful approach:

- First check whether a document exists that meets the applicant's request; ie, a document providing the year of birth of all employees hired by the NDIA's Geelong Office.
- If no document, check whether a document exists that provides an alternative presentation of the same information; eg, a document that while not providing the year of birth, instead provides the ages of employees as at a certain date.
- Failing that, it is possible that this part of the request falls within scope of s. 17 of the FOI Act. That is, if the agency is able to produce a document containing this information using ordinarily available equipment and resources such as a computer which is able to retrieve or collate stored information (data) without substantially and unreasonably diverting the agency's resources, then the agency would have to treat such a document as being within scope of the applicant's request.

I would be happy to discuss with you requirements under s. 17 of the FOI Act.

In relation to the second part of the request, the question appears to point to recruitment policy and would apply, for example, if there is an Agency policy in relation to the recruitment of unemployed persons.

The decision on whether to release documents is made centrally (in National Office) by an authorised decision-maker – currently David Fintan, Corporate Counsel.

However, the authorised decision-maker relies heavily on assistance by the relevant document owners/line areas (in this case the People and Culture Branch) in finding and collating all documents, and assessing whether any exemptions apply.

Further information on FOI roles, responsibilities, and procedure can be found in the attached document.

Key timeframes

We must provide an acknowledgement of the FOI request to the applicant by **22 July 2014** (the FOI team will handle this – this is for your info only).

Subject to any statutory extensions that may apply, the NDIA must notify the applicant of a decision on the request by **7 August 2014**. This is a statutory timeframe and can only be extended in limited circumstances, so it's important we begin the process as early as possible.

Next steps / action

The FOI team (part of Legal and Governance Branch) will be responsible for the general handling and coordination of the request. However, we rely heavily on (and are very grateful for) the responsible line area assisting us identify and collate documents, and alerting us to any sensitivities over the documents which may be relevant to determining if any legal exemptions may apply to their release.

To help us with the initial part of this request, can you and your team please:

1. Confirm whether the request is specific enough for the NDIA to respond to it (including being able to identify all documents the applicant is seeking access to). If not, we can liaise with the applicant to clarify the scope of the request.
2. Search for, identify and locate **all** documents relevant to the request (if the scope of the request is specific enough to do so at this stage).

3. Provide the documents to us with the completed 'schedule of documents' (see attached) by **14 July 2014** (please let us know if it may be difficult to meet this timeframe).
4. We would be grateful if you and your team can also keep track of the time you spend on this request (itemised by staff member and staff level) – this assists in calculating whether any charges may be payable by the applicant, as well as helping us with our mandatory FOI reporting.

Other things to note, but which don't require immediate action at this stage:

- affected third parties may need to be consulted;
- possible briefing of the CEO, Board and Minister;
- any information released to FOI applicants needs to be published on the [NDIA's public disclosure log](#) (subject to certain exceptions – such as if it would be an unreasonable publication of personal information).

Please contact me if you have any questions. Very grateful for your assistance and we look forward to working with your team on this.

Kind regards

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