



5 May 2023

D. A.

BY EMAIL: foi+request-10091-4bca7e2b@righttoknow.org.au

In reply please quote:

FOI Request: FA 23/03/01508

File Number: FA23/03/01508

Dear D. A.

Freedom of Information (FOI) request – Access Decision

On 23 March 2023, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

I write to request all of the Department's correspondence and communications with English Language test providers, dated from 2021 onwards.

On 27 March 2023, the Department requested consultation with you under section 24AB of the FOI Act, advising that a practical refusal reason exists under section 24AA of the FOI Act. On 30 March 2023 you provided an amended scope.

Amended scope 28 March 2023

I am requesting the Department's correspondence and communications with:

- * the British Council, IELTS, and IDP (co-developers of the IELTS)*
- * Educational Testing Services (developers of TOEFL iBT)*
- * Cambridge English (developers of the Cambridge English: Advanced test)*
- * Pearson (developers of the Pearson Test of English Academic)*
- * Occupational English Test*

These are the English language testing providers listed under Regulation 5.17 of the Migration Regulations 1994.

I note that similar requests for correspondence between a Department and individuals have previously been granted under FOI:

*

https://www.righttoknow.org.au/request/communication_between_the_treasu#incoming-29626

** https://www.righttoknow.org.au/request/correspondence_regarding_foi_req*

*

<https://www.righttoknow.org.au/request/9690/response/29843/attach/html/5/FOI%204145%20documents%20released.pdf.html>

** https://www.righttoknow.org.au/request/correspondence_with_csc_or_simil*

** https://www.righttoknow.org.au/request/correspondence_with_atlassian_ab - which includes an unsuccessful attempt to argue that searches of email inboxes represents an excessive strain on Departmental resources*

a date range from 1 Jan 2021 through the most recent present date

.

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access

4 Decision

My decision is to refuse your request.

Section 24 of the FOI Act sets out the power to refuse a request where there is a diversion of resources and a practical refusal reason exists.

(1) If an agency or Minister is satisfied, when dealing with a request for a document that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:

(a) must undertake a request consultation process (see section 24AB); and

(b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.

The Department undertook a consultation request process in relation to your request on 27 March 2023. I have reviewed the documents in the revised scope and considered your response. Although you advised the Department to amend the scope of your request, for the purposes of section 24AA, a practical refusal reason exists in relation to your request; specifically for a document if either (or both) of the following applies:

- (1)(a)(i) the work involved in the processing of the request would substantially and unreasonably divert the resources of the Department from its other operations
- (1)(b) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires you to provide such information concerning the document you are seeking access to, to enable the Department to be able to identify it.

In determining whether processing your request would substantially and unreasonably divert the resources of this Department from its other operations, I have considered the resources that would have to be used for:

- identifying, locating or collating the documents within the filing system of the department;
- deciding whether to grant, refuse or defer access to a document to which the request relates (including resources used for examining the document or consulting with a third party/business area in relation to this request);
- making a copy, or an edited copy of the document;
- notifying any interim or final decision on the request.

Reasons for practical refusal

The relevant business area has advised it requires 150 hours for document search and retrieval, 37.5 hours for consultation with relevant departmental policy and program areas, 75 hours consultation and seek agreement with external stakeholders, and 187.50 hours to consult legal advice.

As such, a total estimated time of **450 hours** would be required to process your request. This does not include assessing and decision making process to finalise this request.

I am satisfied that the Department would be required to divert significant resources from its current operations in order to identify, locate and collate the documents held within the Department, and to make a decision on access to those documents. This diversion would result in a significant drain on the resources of the area within the Department that would be required to process this request.

I consider that this would result in this request imposing both a substantial and unreasonable diversion of resources of the Department from its other operations and that a practical refusal reason exists in relation to this request.

I am satisfied that a practical refusal reason exists under s24AA(1)(a). As a practical refusal reason exists, I am refusing your request for access to these documents

5 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

6 Your Review Rights

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

7 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.

8 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.

Yours sincerely

[Signed electronically]

Vythees

Position number 60141911

Authorised Decision Maker

Department of Home Affairs