



Australian Government

Comcare

4 May 2023

Our Reference: 2023/796

Bertha Binderschmitt

By email: foi+request-10119-d13b2ae7@righttoknow.org.au

Dear Ms Binderschmitt,

Notice of intention to refuse – request consultation process

I refer to your request to Comcare dated 27 March 2023, seeking access under the *Freedom of Information Act 1982* (the **FOI Act**) to:

...all emails, correspondence, and reports exchanged between Comcare Inspectorate employees and the NDIS Quality and Safeguards Commission's HR department or current Senior Executive Service (SES) officers, as well as former COO Mr. Jason Stott, former Commissioner Graham Head, and former Registrar/Advisor to the Commissioner Samantha Taylor.

The request pertains to communications from 1 July 2019 to today, 27 March 2023, concerning areas of concern within Comcare's area of responsibility, as well as any documentation relating to Comcare compliance action against the Commission, if applicable.

For clarity, the areas of concern may include, but are not limited to, the following examples of Comcare's Inspectorate responsibilities over an Australian Public Service (APS) agency, as outlined on the Comcare website:

Monitoring and enforcing compliance with the Work Health and Safety Act 2011 (Cth)

Providing advice and guidance on work health and safety matters

Investigating workplace incidents

Undertaking workplace inspections

Please note that the above examples are not an exhaustive list, and my request covers any other areas of concern within Comcare's jurisdiction. Moreover, I am not requesting any personal or private information of individual claimants, nor am I seeking any correspondence that pertains to specific claim data.

On 30 March 2023, in response to my email, you further clarified the scope of your request as follows:

To help facilitate the search for the requested documents, I am seeking correspondence from any Comcare Inspectorate employees to the following NDIS Quality and Safeguards Commission's SES officers, including their respective titles during the requested period:

Jason Gary Stott - COO

Lisa Claire Pulko - COO

Samantha Jane Taylor - Registrar, Acting Commissioner and advisor to the Commissioner.

Jeffrey Beng-Choon Chan - Senior Practitioner

Melissa Jane Clements - Acting Registrar

Robert William Griew - Complaints Commissioner

Lynne Maree Coulson Barr - Acting Complaints Commissioner

Sian Mary Leathem - Complaints Commissioner

Tracy Anne Mackey - Commissioner

Graeme Head - Commissioner

Simone Illett - Chief People Officer

Sushila Shandil - Former Acting Chief People Officer

Alec Forbes - Former Acting Chief People Officer

Joseph Hanna - Former Acting Chief Operating Officer

Miranda Bruynicks - Former Complaints Commissioner

(SES information obtained from transparency.gov.AU)

Practical refusal reason

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists where the work involved in processing the request would substantially and unreasonably divert the resources of Comcare from its other operations. A decision maker should take into account staffing resources available to an agency or minister for FOI processing, and the impact that processing a request may have on other work in an agency or minister's office, including processing other FOI requests.

Comcare has identified approximately 103 documents falling within the scope of your request, totaling 1501 pages. Due to the volume of documents you have requested, I have undertaken a sampling exercise of approximately 10% of the documents (154 pages) to assess the nature and complexity of the material in the documents, to confirm whether the work involved in processing your request would constitute a substantial and unreasonable diversion of resources from Comcare's other operations.

My 10% sampling exercise included retrieving a variety of the types of document falling within the scope of your request, and conducting a preliminary review of those documents.

In accordance with section 24AA(2) of the FOI Act, I have considered the factors relevant to processing your request. In order to process your request, Comcare would have to:

- review each page of the documents;
- identify if any parts of the documents can be released in full, and consider any necessary redactions;
- apply appropriate redactions;
- consult any relevant third parties; and
- prepare a decision, including scheduling each of the documents.

My review of the sample identified a number of exemptions under the FOI Act which would likely apply to the documents, as the documents include:

- information that, if released, would, or could reasonably be expected to, prejudice the conduct of an ongoing investigation of a breach or possible breach of law (subsection 37(1));
- information that is deliberative in nature (section 47C);
- information that, if released, would found an action by a person for breach of confidence (section 45);
- information that, if released, would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Comcare, and release of which would be contrary to the public interest (section 47E(d)); and
- information that relates to the personal privacy of individuals (section 47F).

These sensitivities mean that, estimating conservatively, it will take a Comcare staff member a minimum of two and a half minutes to review each page of the documents and determine if any of the above exemptions apply to the information.

Amount of time to process your request

Based on the sample of documents that I retrieved, I have calculated the number of hours it would take to process your request in full.

Search and Retrieval	Hours
Search and retrieval of files	21.50
Search and retrieval total	21.50

Document Processing	Hours
Examination of each page of the documents (identifying material that may be exempt under the FOI Act) (2.5 mins per page)	62.50
Consulting with third parties (2 hours per third party)	8.00
Preparation of decision (preparing statement of reasons and scheduling of each of the documents).	15.00
Decision making subtotal	85.50

	Hours
TOTAL	107.00

Based on my experience with the type and volume of records you have requested, I estimate that it would take more than 100 hours to process your request. I note, this is a conservative estimate as it does not include time taken to remove exempt material from the documents.

The estimate of 107 hours of processing time is equivalent to a person working full time on your request for almost 3 weeks.

Accordingly, I am satisfied that this is a 'substantial' request and would also be an unreasonable diversion of the Comcare's resources from its other operations, such as its roles under the *Safety, Rehabilitation and Compensation Act 1988* and the *Work Health Safety Act 2011*.

Based on the estimated hours it would take to process your request, I am satisfied that Comcare staff would be unreasonably diverted from their other operations. Specifically, staff from Comcare's FOI team would need to spend a substantial amount of time working on your FOI request to process and finalise a decision within the statutory timeframe set out in the FOI Act.

While undertaking the work involved in this request, these staff would not be able to undertake their other functions, including but not limited to investigating privacy matters, managing complaints from stakeholders, releasing claim documents on request, and managing other FOI requests. In addition, processing the request would require additional assistance and input from

Comcare's Regulatory Operations Group, which would limit their ability to undertake their usual regulatory inspections and investigations.

What you should do?

I am the officer with whom you may consult with a view to making the request in a form that would remove the ground for refusal. You can contact me by email on foi@comcare.gov.au.

Making your request more manageable may mean excluding specific documents or types of documents. For example, you may wish to revise your scope to:

- exclude duplicate documents;
- exclude any draft documents;
- remove manuals or policy documents from the scope of the request; and
- exclude any documents that were obtained in confidence by Comcare.

Alternately, you may wish to revise your request to be for a few specific documents or types of documents you believe are held by Comcare, such as incident notifications or inspector reports relating to NDIS Quality and Safeguards Commission for the requested period.

Please note that even if you do modify your request, it is possible that a practical refusal reason under subsection 24AA(1)(a)(i) may still exist. As far as is reasonably practicable, we are happy to provide you with further information to assist you in making your request in such a form that removes the practical refusal ground.

Timeframes for revising the scope of your request

Please note that you have **14 days** from the day after you receive this notice to either:

- withdraw the request;
- make a revised request; or
- indicate that you do not wish to revise the request.

If you do not respond in one of these ways within 14 days, the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act. If you indicate you do not wish to revise your request, I will proceed to make a decision on whether to refuse the request on resource grounds under section 24(1).

If you need more time to respond, please contact me within the 14 day period to discuss your need for an extension of time.

Please note that under section 24AB(8) of the FOI Act, the time for processing your FOI request is

suspended from the day you receive this notice until the day you do one of the things listed above.
Your response is due to me by close of business **19 May 2023**.

Contacts

Should you require clarification of any matter discussed in this letter, please contact me by email at foi@comcare.gov.au.

Yours sincerely

Sam
Statutory Oversight Officer