



Australian Government

Department of Health and Aged Care

Department Reference: FOI-4396

Ms Karen Reynolds

By email: foi+request-10224-7992ed09@righttoknow.org.au

Dear Ms Reynolds

Freedom of Information Request FOI-4396 Notice of Practical Refusal

I refer to your request of 6 May 2023, received by the Department of Health and Aged Care (the department), seeking access to the following documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act):

I seek any documents, files, emails, notes, file notes or information which relates to the rationale for dropping of COVID protections (including masking and mask mandates, opening of international borders, etc), especially benefit-cost ratio and analysis/modeling about mortality and cohorts who may be at severe risk from COVID.

The department also received identical requests transferred from the Department of Prime Minister and Cabinet and the National Health and Medical Research Council, in accordance with section 16 of the FOI Act. You were informed of these transfers on 10 May 2023 (FOI 4408) and 11 May 2023 (FOI 4412) respectively. This notice includes those requests.

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

Power to refuse request

I am writing to tell you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of the department from its other operations due to its broad scope and/or does not provide such information concerning the document as is reasonably necessary to enable a responsible officer of the department to identify it. This is called a 'practical refusal reason' (section 24AA).

On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

Why I intend to refuse your request

I have decided that a practical refusal reason exists for the reasons set out below.

Paragraph 15(2)(b) of the FOI Act provides that a request must provide such information concerning the document as is reasonably necessary to enable a responsible officer of the department to identify it.

Section 24AA of the FOI Act provides that a *practical refusal reason* exists in relation to a request for a document if either (or both) of the following applies:

- (a) the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations
- (b) the request does not satisfy the requirement in paragraph 15(2)(b).

Your request does not specify any particular decision or actions, but covers an unrestricted number and type of decisions or actions relating to 'dropping of COVID protections' ("including ... etc."). Your request therefore does not provide such information as is reasonably necessary to enable the department to identify the documents ("especially benefit-cost ratio and analysis/modelling") to which you seek access.

I also note that the types of decisions or actions relating to COVID protections that you do refer to in your request ("including masking and mask mandates, opening of international borders etc") were the responsibility of jurisdictions and agencies other than this department, such as state and territory governments and their relevant health authorities.

Moreover, your request for "any documents, files, emails, notes, file notes or information which relates to..." is necessarily extremely broad. You have not identified any specific documents, or any individuals who may hold documents that would be relevant to your request. Were the department to attempt to identify relevant documents, it would need to undertake a very broad range of searches. For the department's decision maker to be fully satisfied that all relevant documents had been identified, they would potentially need to consult with every single member of staff within the department to seek confirmation as to whether that staff member holds relevant documents. As at 30 June 2021, the department had a workforce of 4,760 ongoing and non-ongoing APS staff.¹

¹ www.health.gov.au/sites/default/files/documents/2021/10/department-of-health-annual-report-2020-21.pdf [p.156]

On the basis that the decision maker would need to consult each staff member, and each staff member took an average of 1 minute to review their individual records for relevant documents, this would take the department as a whole approximately **80 hours** to complete that task.

I therefore consider that your request in its current form does not provide such information concerning the documents you seek as is reasonably necessary to enable a responsible officer of the department to identify them. I am also satisfied that any attempt by the department to processing your request, in its current form, would substantially and unreasonably divert the resources of the department from its other operations.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed.

Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, or specific decisions to which you are referring, our agency may be able to identify any such documents. For example, you may wish to consider specifying:

- particular decisions by date, subject and jurisdiction
- the type of document

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice.

During this period, you are welcome to seek assistance from the department's FOI Section. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

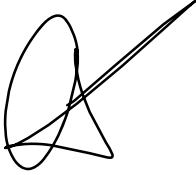
Legislative provisions

The FOI Act, including the provisions referred to above, are available on the Federal Register of Legislation website: www.legislation.gov.au/Series/C2004A02562

Contact officer

For the purposes of this consultation, you may contact the FOI Section on (02) 6289 1666, or you can email us at foi@health.gov.au.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a diagonal stroke and a loop.

C Johnston
A/g General Counsel
Legal Advice and Legislation Branch

15 May 2023