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18 May 2023

Watson Norwood

www.accc.gov.au

Sent via email: foi+request-10235-4acea7ab@righttoknow.org.au

Dear Watson

Notice of intention to refuse access because a practical refusal reason exists – insufficient information provided to identify requested documents

I refer to your correspondence of 6 May 2023 which states as follows:

'I am writing to make a request under the Freedom of Information Act for a complete copy of the departments' Freedom of Information (FOI) logs for the period 2013-2023, including any secondary departments controlled by the agency.'

I request that this is provided as a document and not a simple redirect to the agency website as I am of the view that your online disclosure logs do not actively reflect your FOI requests that you have received in this period.'

I would appreciate it if you could provide me with this information in an electronic format, such as a PDF or spreadsheet, if possible.'

Subsection 24(1) of the FOI Act provides that where an agency, such as the ACCC, is satisfied when dealing with a request for a document that a 'practical refusal reason' exists in relation to the request, the agency:

- must undertake a request consultation process (in accordance with section 24AB); and
- if, after the request consultation process, the agency is satisfied that the practical refusal reason still exists – the agency may refuse to give access to the document.

Paragraph 24AA(1)(b) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the request does not satisfy the requirement in paragraph 15(2)(b).

Paragraph 15(2)(b) of the FOI Act requires that a valid request made under the FOI Act must 'provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency [...] to identify it.'

Having carefully considered your correspondence of 6 May 2023 as set out above, it is unclear to me the particular documents to which you seek access under the FOI Act. For example:

- Where you refer to '(FOI) logs for the period 2013-2023' is this a reference to all requests made under the FOI Act of the ACCC from 1 January 2013 until and including the date of your request?
- If yes, what documents are you seeking access to in relation to all of those requests? That is, are you seeking access to the original requests, all correspondence associated with each request including the decisions made and any documents released?
- In the second paragraph of your request, you refer to 'online disclosure logs' which I assume to mean the ACCC's 'Freedom of Information disclosure log' published and maintained by the ACCC in accordance with section 11C of the FOI Act and available here: <https://www.accc.gov.au/about-us/freedom-of-information/freedom-of-information-disclosure-log>
- If that's correct, is the reference in the second paragraph of your correspondence to the ACCC's FOI disclosure log different to the '(FOI) logs' referred to in the first paragraph of your request?
- If not, and the reference in your first paragraph to '(FOI) logs' is also a reference to the ACCC's FOI disclosure log, as available here: <https://www.accc.gov.au/about-us/freedom-of-information/freedom-of-information-disclosure-log>, to which documents on that log do you seek access to? For example, noting that you do not wish to be provided with a link to the ACCC's publicly available FOI disclosure log, are you requesting, under the FOI Act, that the ACCC download each and every document published in accordance with section 11C of the FOI Act for every relevant FOI request made of the ACCC from 1 January 2013 up to and including the date of your request? Or are you requesting that, noting the ACCC's disclosure log is published across numerous webpages, that you be provided with screenshots of the ACCC's disclosure log for the entirety of the date range to which your request refers (1 Jan 2013 – 6 May 2023)? Or are you seeking access to be both screenshots and documents released and published in accordance with section 11C of the FOI Act?

Noting that I've been unable to resolve these questions by reference to the terms of your correspondence of 6 May 2023, I'm of the view that your request does not satisfy the requirement in paragraph 15(2)(b) of the FOI Act. That is, I'm of the view your request does not provide sufficient information to enable me to identify the document or documents to which you seek access.

Accordingly, the ACCC is considering refusing your request, as currently framed, under section 24 of the FOI Act because a practical refusal reason exists – specifically, your request does not satisfy the requirement in paragraph 15(2)(b) of the FOI Act.

Request consultation process

Before making a decision to refuse your request you have an opportunity to revise your request to provide sufficient information to enable us to identify the documents you are seeking access to. This is called a 'request consultation process'. In accordance with subsection 24AB(6) of the FOI Act, before **1 June 2023**, you must either:

- revise your request (for example by providing sufficient clarification such that a practical refusal reason no longer exists in relation to your request),
- tell us that you do not wish to revise your request, or

- withdraw your request.

If you do not respond in one of these ways in that timeframe your request can be taken to be withdrawn.

What should you do

I am the ACCC contact officer in relation to your request. Please read the attached tips for success ([Attachment A](#)) which may assist you in responding to this letter and then email me via foi@acc.gov.au to make a time to discuss your request. I am happy to help you to revise your request to remove the practical refusal ground.

I encourage you to contact me before submitting a revised request. Once you submit a revised request, the request consultation process ends and we will make a decision regarding whether the practical refusal ground still exists based on the terms of your revised request. Even if you modify your request, the practical refusal reason may still exist or we may need further time to process your revised request. This will depend upon the terms of your final request.

Please note, the ACCC's disclosure log contains information that has been released in response to every FOI request received by the ACCC from 2011 onwards (i.e., where a decision was made to grant or part grant access to documents), subject to certain exceptions under s.11C of the FOI Act. Please note that where a decision has been made to refuse access (in full) to documents the subject of a FOI request, or where the ACCC does not hold documents the subject of a FOI request, the FOI Act does not require that decision, or the related request, to be published on the ACCC's FOI disclosure log.

If you need more time to respond, please contact me before **1 June 2023** to request an extension of time.

During this period of consultation, the statutory timeframe for the processing of your request is on hold.

I have also attached an extract from the FOI Act for your information ([Attachment B](#)).

Yours sincerely



Rebecca Fenech
FOI Manager
ACCC Legal Group

Sent by email 18/05/2023

Attachment A

Tips for success

It would assist us if you were able to clearly identify the specific documents you are after, or clarify what information you are seeking.

Framing the scope of your request using the below suggestions will assist us to identify the document/s you are seeking, and may also assist in removing any practical refusal reasons.

- Limit your request to one or two dot points.
- Choose a specific category of documents (i.e. final documents, file notes, email correspondence or reports). Requesting 'all documents' in relation to a matter or issue may lead to a practical refusal reason
- Choose a specific date or date range (i.e. a final document dated 5 June 2019 or final documents created between 1 June 2019 and 30 June 2019). Too broad a date range may result in a practical refusal reason
- Limit your request to documents about a specific issue in relation to a specific matter (i.e. correspondence between the ACCC and (name of company or person) addressing why they consider the conduct was not unlawful). Requesting 'all documents' in relation to a matter or issue may lead to a practical refusal
- Be clear about what you **don't** want (i.e. hardcopy documents, publicly available material, duplicates, copies of your own correspondence).
- Exclude third party identifying material if you can, to minimise our need to consult such parties on your request.

Example FOI request:

'I request, under the FOI Act, final reports and file notes relating to x matter, in the period 1 July 2019 to 30 July 2019.

I am not seeking copies of internal correspondence, draft documents or publicly available documents.'

Attachment B

Extracts of the Freedom of Information Act

15 Requests for access

Requirements for request

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and**
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

24AB What is a *request consultation process*?

- (1) This section sets out what is a **request consultation process** for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the ***contact person***) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;
 - (e) that the period (the ***consultation period***) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.

(4) For the purposes of subsection (3), **reasonable steps** includes the following:

- (a) giving the applicant a reasonable opportunity to consult with the contact person;
- (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

(5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

(6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- (a) withdraw the request;
- (b) make a revised request;
- (c) indicate that the applicant does not wish to revise the request.

(7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:

- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
- (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

(8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

(9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.