



Australian Government
Attorney-General's Department

Our ref: FOI23/372; CM23/15565

20 October 2023

To: CR

By email: foi+request-10488-30e28e96@righttoknow.org.au

Dear Applicant

Freedom of Information Request FOI23/372 – Decision letter

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Department (the department).

Your request

On 21 July 2023, you requested access to:

I refer to the previous FOI request made by Alex Pentland:

https://www.righttoknow.org.au/request/referendum_on_the_voice_to_parli

and request access to the following documents:

(a) briefing notes, legal advice and file notes held by either the Attorney-General and/or his office and/or the Attorney General's Department, as well as any correspondence between the Attorney-General and/or his office and the Attorney General's Department, in relation to the proposed wording for the Voice referendum;

(b) briefing notes, legal advice and file notes held by either the Attorney-General and/or his office and/or the Attorney General's Department, as well as any correspondence between the Attorney-General and/or his office and the Solicitor-General and/or any correspondence between the Attorney-General's Department and the Solicitor-General in relation to the proposed wording for the Voice referendum;

(c) briefing notes, legal advice and file notes held by either the Attorney-General and/or his office and/or the Australian Government Solicitor, as well as any correspondence between the Attorney-General and/or his office and/or any correspondence between the Attorney-General's Department and the Australian Government Solicitor in relation to the proposed wording for the Voice referendum

I understand that a preliminary search of the documents relevant to the previous request resulted in a large volume of 900 documents. As such, I am willing to enter into a consultation process to reduce the scope of the request. If possible, I would appreciate it if you could identify which request returned such a high result, and provide any insights or outliers that you may have identified.

On 18 August 2023, the department acknowledged your request.

On 18 August 2023, the department wrote to you, advising you that a practical refusal reason exists under section 24AA of the FOI Act, and requesting that you reduce the scope of your FOI request.

On 19 August 2023, you replied to the department, requesting a breakdown of the estimated time required for each step in the process and an explanation of the challenges faced with handling the request. You also asked what part of your request included a significant number of documents.

On 31 August 2023, the department wrote to you seeking your agreement to extend the consultation period by 7 days. In response to your email of 19 August 2023, the department advised that a significant proportion of the documents captured by the scope of your request were captured under the 'any correspondence' category of your request. The department suggested revising the scope of your request to:

Finalised submissions or briefs prepared for the Attorney-General in relation to the proposed wording for the Voice referendum.

On 1 September 2023, you wrote to the department and agreed to the department's request to extend the consultation period by 7 days but expressed dissatisfaction with the time taken to progress the FOI request to date. You also asked the department to confirm whether the largest volume of documents within the scope of your request related to internal documents of the Attorney-General's Office, correspondence between the Attorney-General and Solicitor-General, or correspondence between the Attorney-General and the Australian Government Solicitor.

On 1 September 2023, the department wrote to you and advised that the Attorney-General and his Office are a separate entity to the Attorney-General's Department and the department will not hold documents internal to the Office of the Attorney-General or correspondence between the Attorney-General and other recipients, unless the department has been included in that correspondence.

On 1 September 2023, you wrote to the department and advised that while you were considering revising the scope of your request you had not yet formally made a decision on your scope revision. You provided a proposed scope revision and sought the department's feedback on whether this scope would remove the reason to practically refuse your request.

On 7 September 2023, you wrote to the department expressing dissatisfaction at not receiving a response to your correspondence of 1 September 2023. You also confirmed you were formally revising the scope of your request to:

a) Finalised briefing notes, legal advice and file notes held by the Attorney General's Department, in relation to the proposed wording for the Voice referendum.

b) Correspondence between the Attorney General's Department and the Attorney-General and/or the Attorney-General's Office, in relation to the proposed wording for the Voice referendum.

c) Correspondence between the Attorney General's Department and the Australian Government Solicitor, in relation to the proposed wording for the Voice referendum.

On 8 September 2023, the department acknowledged your revised scope of the above terms and sought your agreement for a 15AA extension of time for 30 days.

On 9 September 2023 you declined the extension of time.

On 12 September the department advised you an application had been made to the Office of the Australian Information Commissioner (OAIC) for an extension of time under 15AC.

On 16 October 2023, the OAIAC granted the department an extension of time to the 20 October 2023 under section 15AC of the FOI Act.

My decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

As advised in the department's correspondence of 18 August 2023, it was previously decided that a practical refusal reason exists in relation to your FOI request within the meaning in section 24AA of the FOI Act (copy at **Attachment A**).

I am writing now to advise that, despite the revision of the scope of your FOI request, a practical refusal reason still exists.

In coming to this decision, I have taken into consideration the departmental resources that would be required to identify, locate and collate all documents within the scope of your request, and decide whether to grant, refuse or defer access to each of those documents would divert the resources of the department from its other operations.

The department has identified over 1750 documents potentially within the scope of your request. The actual number of documents identified will be substantially higher as a large proportion of these documents were emails containing multiple attachments. The work of processing each of these documents includes:

- the identification and removal of duplicates,
- the identification and removal of irrelevant material,
- copying and converting documents to the PDF format for assessment and processing,
- consultations with relevant third parties and other agencies,
- the redaction of exempt material as determined by internal and external consultations, and
- preparation of a decision package for consideration including a schedule of documents and statement of reasons.

This work would take in excess of 86 hours by departmental officers. This is a conservative estimate based on a sample of 100 documents.

I have also had regard to the staffing resources within the Office of Constitutional Law to assess the material to determine the application of the relevant exemptions and consider a decision on whether to grant, refuse or defer access, and the impact this work will have on the other work of the team.

The Office of Constitutional Law is a small specialist team. The assessment of the number of documents identified would amount to a substantial and unreasonable diversion of the resources of this team.

Accordingly, I have decided to refuse access to the documents you requested pursuant to section 24(1)(b) of the FOI Act (copy at **Attachment A**).

Review rights and questions

Your review rights under the FOI Act are set out at **Attachment B** to this letter.

If you wish to discuss this decision, the FOI case officer for this matter is Joanna, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D. Lewis', with a stylized flourish at the end.

David Lewis
General Counsel (Constitutional)
Office of Constitutional Law

Attachments

Attachment A: Sections 24AA and 24 of the FOI Act
Attachment B: Review rights

Attachment A

Section 24AA of the FOI Act: When does a practical refusal reason exist?

- (1) For the purposes of section 24, 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:
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
 - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
 - (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

Section 24 of the FOI Act: Power to refuse request--diversion of resources etc.

- (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.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
 - (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.



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Attorney-General's Department

Attachment B - FOI Review rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter, and be lodged in one of the following ways:

email: foi@ag.gov.au

post: Freedom of Information and Privacy Section
Strategy and Governance Branch
Attorney-General's Department
3-5 National Circuit BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of the decision letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>