



Australian Government

Department of Foreign Affairs and Trade

FOI Ref: F1154
File No: 15/20458
Date: 15 May 2015

Mr Mark Napier
foi+request-1059-9d594ead@righttoknow.org.au

Dear Mr Napier

Re: Freedom of Information (FOI) Request

Thank you for your e-mail of 4 May 2015, seeking access under the *Freedom of Information Act 1982* (the FOI Act) to:

"all documents, including cables, notes, etc showing attempts by the current and former Foreign Minister(s) in attempting to seek clemency or alternative sentencing for Andrew Chan and Myuran Sukumaran BEFORE 01/01/2014."

DFAT intends to refuse the request as currently framed, on the grounds that the work involved in processing it would substantially and unreasonably divert DFAT's resources from its other operations.

Practical refusal reason

Notice is hereby given under section 24AB(2) of the FOI Act of an intention to refuse to grant access to the documents sought. The practical refusal reason is that the work involved in processing the request would substantially and unreasonably divert the resources of DFAT from its other operations.

The broad scope of your request is estimated to have captured a very large number and variety of documents spanning a ten year period. In order to identify and locate relevant documents, we would be required to search holdings across several areas of the Department. The Consular Branch alone has advised that they would be required to search across 24 hardcopy files with an estimated 200 pages of documents in each file, as well as several electronic databases.

I note in this regard Recommendation 24 of Dr Allan Hawke's Review of the FOI Act, which proposes the introduction of a 40-hour processing time ceiling for FOI requests. Processing your request in its current form would, in my view, be a substantial and unreasonable diversion of DFAT's resources within the meaning of section 24AA(1).

Consultation process

I am the DFAT officer with whom you may consult if you wish to revise the request to a narrower scope such that it could in fact be processed. I may be contacted by email at:

foi@dfat.gov.au and I am happy to provide you, so far as is reasonably practicable, with any information that I can to assist in amending your request under the FOI Act.

In accordance with section 24AB(2)(e), the consultation period during which you may consult with me to revise the scope of your request is 14 days after the day you are given this notice. Please note that if you do not take this opportunity to consult, in accordance with section 24AB(7)(a), your request will be taken to have been withdrawn under section 24AB(6).

Please note that during this period of consultation, the statutory timeframe under section 15(5) of the FOI Act for the processing of your request is on hold (see section 24AB(8) for details).

I have attached a copy of sections 24, 24AA and 24AB of the FOI Act for your information.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Indra', is positioned above the typed name.

Indra McCormick
Director
Freedom of Information and Privacy Law Section

Attachment A

24 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.

24AA 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.

24AB What is a *request consultation process*?

Scope

- (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.

From: Mark Napier <foi+request-1059-9d594ead@righttoknow.org.au>
Sent: Monday, 4 May 2015 5:28 AM
To: FOI
Subject: Freedom of Information request - Documents in relation to the representations/efforts of the current and former Foreign Ministers in seeking clemency or alternative sentencing for Myuran Sukumaran and Andrew Chan before Jan 1 2014.

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Lindy

Dear Department of Foreign Affairs and Trade,

I seek, under the provisions of the FOI Act any and all documents, including cables, notes, etc showing attempts by the current and former Foreign Minister(s) in attempting to seek clemency or alternative sentencing for Andrew Chan and Myuran Sukumaran BEFORE 01/01/2014.

Yours faithfully,

Mark

Please use this email address for all replies to this request:
foi+request-1059-9d594ead@righttoknow.org.au

Is foi@dfat.gov.au the wrong address for Freedom of Information requests to Department of Foreign Affairs and Trade? If so, please contact us using this form:
https://www.righttoknow.org.au/change_request/new?body=dfat

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