Our ref: FOI23/469; CM23/34240

6 October 2023

Brutus
By email: foi+request-10652-3b4ad8d1@righttoknow.org.au

Dear Brutus

Freedom of Information Request FOI23/469 – Notice of intent to refuse

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

Your request

On 6 September 2023, you requested access to:

> "Despite an express object of the Public Interest Disclosure Act 2013 (Cth) requiring that "disclosures by public officials are properly investigated and dealt with" (Public Interest Disclosure Act 2013 (Cth), s 6(d)), under the Freedom of Information Act 1982 (Cth), I request access to any and all documents in the possession of the Attorney-General's Department providing that it is permissible for an inadequate public interest disclosure investigation to remain unremedied by officials in the agency to which an internal disclosure under the Public Interest Disclosure Act 2013 (Cth) was allocated for investigation."

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

Section 15(2) of the FOI Act sets out the requirements of a valid request. Those requirements include that the request must provide such information as is reasonably necessary to enable a responsible officer of the agency or the Minister to identify the document/s requested: s 15(2)(b).

In my opinion, your request does not meet the requirements of a valid request, as it does not provide such information as is reasonably necessary to enable me to identify the document/s that are requested. I note that on **20 September 2023**, the department emailed you and asked you to further clarify your request. On **20 September 2023**, you responded and advised that you would not amend your request as you considered it was sufficiently clear.

I have considered your response email, however I remain of the view that your request does not meet the requirements of the valid request. For this reason, I consider a "practical refusal reason" exists within the meaning of s 24AA(1)(b) of the Act. On this basis I intend to refuse your request under s 24(1) of the Act.

Before I make a decision, however, s 24AB of the Act provides for a "request consultation process". In effect, this means you have 14 days in which to do one of the following:

1. withdraw your request;
2. revise the scope of your request to clarify the document/s in relation to which you are seeking access; or
3. indicate that you do not wish to revise your request.

If you do not do one of these 3 things, or you do not respond to this letter within 14 days, your request will be deemed to be withdrawn.

Questions

If you wish to discuss this notice or seek assistance from the department to revise your request, please email your case officer, Alistair, by email to foi@ag.gov.au.

Yours sincerely

L Stockwell
A/g Assistant Secretary
Transparency and Administrative Law Branch

Attachments
Attachment A: Sections 24AA and 24AB of the FOI Act

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 24AB of the FOI Act: 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.