



**Australian Government**  
**Attorney-General's Department**

Our ref: FOI23/469; CM23/34240

27 October 2023

Brutus

By email: [foi+request-10652-3b4ad8d1@righttoknow.org.au](mailto:foi+request-10652-3b4ad8d1@righttoknow.org.au)

Dear applicant

**Freedom of Information Request FOI23/469 – 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 3 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.”*

On 6 October 2023, I wrote to you to advise you that a practical refusal reason exists under s 24AA of the FOI Act, and to request that you clarify the scope of your FOI request.

On 20 October 2023, you replied to the department and indicated that you did not wish to revise the scope of your FOI request. You also noted that you made your initial request on 3 September 2023 and therefore the request was due on 3 October 2023, not 6 October 2023. I acknowledge and apologise for the department's administrative error in recording the incorrect date your request was received.

In your email, you noted that, as the decision in your request was due on 3 October 2023 and a decision was not made, it became a deemed refusal by the department at that date. You advised you had therefore lodged a request with the Office of the Australian Information Commissioner (the OAIC) for an Information Commissioner (IC) review of the deemed refusal.

While you have advised you have made an IC review request, I am providing you with my decision in relation to your request for the record and to assist the IC review process.

**My decision**

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 documents 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 documents 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.

As advised in my letter of 6 October 2023, I have previously decided that a practical refusal reason exists in relation to your FOI request within the meaning in s 24AA of the FOI Act (copy at **Attachment A**). In that letter, I asked you 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.

I have interpreted your email of 20 October 2023 as indicating you did not want to revise your request. Accordingly, I am now writing to advise that, as you did not revise the scope of your request, a practical refusal reason still exists.

Accordingly, I have decided to refuse access to the documents you requested pursuant to s 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 Alistair, who can be reached on (02) 6141 6666 or by email to [foi@ag.gov.au](mailto:foi@ag.gov.au).

Yours sincerely



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

### **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 Information Commissioner review of the decision.

***Information Commissioner review***

Under s 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](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

email: [foidr@oaic.gov.au](mailto: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>