



Australian Government

Australian Public Service Commission

Marius

By Email: foi+request-10761-3027694e@righttoknow.org.au

Our Reference: LEX 679

Dear Marius,

Freedom of Information request

1. I am writing about your request dated **16 October 2023** for access to documents under the *Freedom of Information Act 1982* (FOI Act) held by the Australian Public Service Commission (Commission).
2. I am an authorised officer under subsection 23(1) of the FOI Act to make decisions in relation to Freedom of Information (FOI) requests.

Request Consultation Process

3. I am writing to advise that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations due to its size and broad scope. This is called a practical refusal reason' under section 24AA of the FOI Act.
4. On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation processes' as set out under section 24AB of the FOI Act.
5. You have **14 days** to respond to this notice in one of the ways set out below.

Why I intend to refuse your request

6. You requested access to documents in the following terms:
 - *I am making this request for access to documents that may be in the control of the Office of the APSC. If the documents are not in the control of the APSC,*

do not transfer this request to the agency that officials in the APSC believe has the documents. If the requested documents are not in the control of the APSC, please simply refuse access to the documents under section 24A of the FOI Act.

- *As to my right to elect whether I would like the Office of the Commonwealth Ombudsman to deal with this request and not transfer it to another agency, I refer you to the Federal Court of Australia's judgment in *Bienstein v Attorney-General* [2007] FCA 1174, [38]. The law on the matter is settled and clear.*
- *I request access to the role evaluation record, prepared between 1 January 2017 and 31 December 2020, that shows that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Queensland District Registry of the Federal Court was, in the light of the work value of the group of duties described in the work level standards and a proper job analysis, lawfully reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000 (Cth).*

7. Under subsection 24AA(2) of the FOI Act an agency or minister must have regard to the resources that would have to be used for:

- identifying, locating or collating the documents within the filing system of the agency or the office of the Minister;
- 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 examining the document or consulting with any person or body in relation to the request);
- making a copy or an edited copy, of the document; and
- notifying any interim or final decision on the request.

8. Further to the above, the Commission may have regard to other matters in deciding if a practical refusal reason exists, relevantly:

- the staffing resources available to an agency;
- the impact that processing a request may have on other work in an agency; and
- whether an applicant cooperates in framing a request to reduce the processing workload.

9. I have taken into account all of the above matters in forming my preliminary decision to refuse your request. I have not taken into account:

- any reasons that you have given for requesting access; or
- the Commission's belief as to what your reasons are for requesting access; or
- any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

10. My reasons are set out below.

Reasons

11. Firstly, I am of the preliminary view that processing your request would be a substantial diversion of the Commission's resources because:
 - collecting and reviewing the volume of material involved would be significant;
 - identifying, locating and/ or collating documents would particularly be onerous as it is estimated that documents from multiple sources will be found that may be captured by the form the request takes; and
 - the contents of the documents will require diligent examination and likely involve significant redactions.

12. Secondly, I am also of the preliminary view that processing your request would be an unreasonable diversion of the Commission's resources because:
 - you have stated in your request that you do not wish for the request to be transferred to the Federal Court of Australia. Given the nature of your request, relating to recruitment in the Federal Court, this is the agency most likely to hold the records you are seeking in your request, not the Commission or the Office of the Commonwealth Ombudsman;
 - the Commission is a portfolio agency, with limited staffing resources available;
 - the Commission does not have, nor has ever previously required, any permanent dedicated FOI staffing resources as it has historically received a low number of FOI requests that are capable of being managed within the existing resources;
 - the Commission has limited capacity to obtain temporary resourcing in considering the impact of processing your request; and
 - the Commission is currently working on a number of priority matters related to the Government's public service reform agenda that was recently [announced](#) by the Minister for the Public Service the Hon Senator Katy Gallagher. Processing your request would unreasonably divert resources that would otherwise be dedicated to performing the essential operations of the agency.

13. Finally I am of the preliminary view that processing your request would be an unreasonable diversion of Commission resources because since April 2022, the Commission has processed multiple requests or request reviews for the same or similar material to that you are seeking.

14. Your request captures materials related to a large number of these requests, including documents created as part of processing them.

15. We anticipate your request as framed will involve a substantial amount of time for the Commission to go through the large volume of the same or similar documents in those previous requests. This is reflected in the estimated processing times.

Amount of time to process your request

16. Based on a preliminary assessment of the volume of documents and a review of a sample of their contents, a breakdown of the time estimated for each stage in processing the request is approximately:

| Search and retrieval | Time required to undertake tasks |
|--|---|
| Executing searches, examining relevant documents and collating documents | up to 5 hours |
| Decision making | |
| Identify and examine relevant documents | up to 24 hours |
| Redacting pages | up to 27 hours |
| Consult third parties | up to 9 hours |
| Writing statement of reasons | up to 3 hours |
| Compiling schedule of documents | up to 10 hours |
| Process Subtotal | up to 78 hours |
| Process Total (minus 'first 5 hours free') | up to 73 hours |

Request consultation process

17. You now have an opportunity to revise your request to enable it to proceed.

18. Revising your request can mean narrowing its scope to make it more manageable or explaining in more detail the documents rather than the information you wish to access. For example, by providing more specific information about exactly what documents you are interested in, the Commission will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

19. Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request;
- make a revised request; or
- tell us that you do not wish to revise your request.

20. The consultation period runs for **14 days** and starts on the day after you receive this notice.

21. During this period, you are welcome to seek assistance from the Commission to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. Please note that under subsection 24AB(8) of the FOI Act the time taken to consult you regarding the scope of your request is disregarded for the purposes of the 30 day time limit for processing your request.

22. If you do not do one of the three things listed above during the consultation period or you do not consult the Commission during this period, your request will be taken to have been withdrawn.

Contacts

23. If you require clarification on matters in this letter please contact the Commission's FOI Officer by email at foi@apsc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Melanie McIntyre', with a long horizontal line extending to the right.

Melanie McIntyre
Authorised FOI decision maker
11 November 2023