



Request consultation notice due to existence of a practical refusal reason under section 24AB of the *Freedom of Information Act 1982*

S 24AB consultation notice Jesse (Position Number 62371652),
Information Access Officer, Information Access Unit,
Ministerial, International & Stakeholder Relations Branch, Department of Veterans' Affairs

Applicant: Mr Alan Ashmore

Decision date: 28 November 2023

FOI reference number: LEX 61891

Sent by email: foi+request-10764-1efd3768@righttoknow.org.au

Dear Mr Ashmore,

Freedom of Information Request: LEX 61891

Purpose of this notice

1. The purpose of this notice is to advise you (as required under section 24AB of the *Freedom of Information Act 1982* (**FOI Act**)) that I intend to refuse your request on the basis that a practical refusal reason exist, as defined by section 24AA of the FOI Act.
2. Based on the terms of your request, and from initial searches undertaken to respond to your request, I am of the view that a practical refusal reason exists because:
 - a. Processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

Authority to make decision

3. I, Jesse (Position Number 62371652), Information Access Officer, Information Access Unit, Ministerial, International & Stakeholder Relations Branch, am an officer authorised by the

Secretary of the Department to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

Scope of your request

4. On 17 October 2023 you made a request for access to documents in the possession of the Department. Your request sought access to:

'... 'BACKGROUND:

In May 2023 the OAIC found DVA had breached the privacy of a veteran in relation to the MATES program.

INFORMATION I AM SEEKING:

In regard to the MATES program, I am seeking all correspondence including minutes of meeting, internal emails within DVA, plus all written communication both to and from DVA to the University of South Australia, University of Adelaide and Phoenix Australia for the period 1 April 2023 to 17 October 2023...'

5. On 19 October 2023, the Department acknowledged your request via email.

Power to refuse a request

6. Section 24 of the FOI Act provides that if the Department is satisfied that a practical refusal reason exists in relation to a request, the Department must undertake a consultation process with you, and if, after that consultation process, the Department remains satisfied that the practical refusal reason still exists, the Department may refuse to give you access to the documents subject to the request.
7. However, before I make a decision to refuse your request you have an opportunity to revise your request to remove the practical refusal reason. This is called a 'request consultation process'. You have 14 days to respond to this notice in one of the ways set out below at page 6. As mentioned below, you can request more time to consider and respond to this notice. Please let me know if you would like additional time to respond.

When does a practical refusal reason exist (section 24AA of the FOI Act)

8. The practical refusal reason applicable to your request is that:

- a. processing your request, as best the Department can understand the terms, is likely to result in a substantial and unreasonable diversion of the Department's resources from its other operations (section 24AA(1)(b) of the FOI Act).

Request is substantial

9. Under section 24AA(2) of the FOI Act, the Department 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;
- 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.

10. Further, the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**) identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency's resources from its other functions. These include:

- the staffing resources available to the agency for FOI processing;
- the impact that processing a request may have on other work in the agency, including FOI processing;
- whether an applicant has cooperated in framing a request to reduce the processing workload;
- whether there is a significant public interest in the documents requested; and
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

11. In order to assess whether the request is voluminous for the purposes of section 24AA(1)(a)(i), the Department processed a small sample (5%) of the requested documents (244 pages) in relation to one of the three parties listed in the scope of your request to calculate the time and resources required to complete the request.
12. I estimate that 165 hours of processing time would be required to process part of this request. The reasons for this are as follows:
 - Based on the 5% sample size having 244 pages, I estimate that there are approximately 4880 pages of material relevant to documents between DVA and one of the three parties mentioned within the scope of your request. These 4880 pages are contained over 395 documents identified as being relevant to your request.
 - Assuming this conservative estimate of 2 minutes per page (although technical and protected documents will likely need 3-5 minutes per page), it would take an FOI delegate approximately 9,760 minutes or 162 hours to review and mark up redactions for the documents.
 - Further to the previous point, a statement of reasons will need to be provided to you. I anticipate that it would take approximately 3 hours to draft the statement of reason for this decision.
 - From my initial review of the documents, it appears that they contain exempt material which will require redactions to withhold material considered to be exempt from release under the FOI Act.
 - It is likely that multiple exemptions will need to be considered and applied to the documents including sections 47C (documents subject to deliberative processes), 47E (documents affecting certain operations of agencies), 47F (documents affecting personal privacy) and 42 (legal professional privilege) of the FOI Act.
 - You have requested documents that relate to multiple third parties and their personal information which would require at least three third party consultations to process this request. The Department has not factored two of the three third parties within the above calculations as it is evident from the above points that it would only further increase the processing time for this voluminous request.

13. Taking these factors into account, I have concluded the request is substantial.

Request is unreasonable

14. I have considered whether the substantial resource burden would be unreasonable having regard to the following:

- 165 hours of processing time is, at face value, an unreasonable burden for a single FOI request, taking into account the need to process multiple requests at any given time, and the impact such a burden would have on responding to other FOI applicants and for the relevant business area to undertake their designated duties.
- Due to the broad nature of your request the relevant business areas would be required to spend a significant amount of time and resources in document retrieval and scoping activities.

15. Taking the above factors into account, I am of the view that the request as it currently stands is unreasonable, as well as substantial.

Ways you can revise the scope of your request

16. You now have an opportunity to revise your request so that the grounds for a practical refusal are removed.

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

18. For example, you may want to consider:

- providing further clarification about the information/specific documents you are seeking access to;
- a narrower scope of documents to a more specific act

19. You may wish to provide a narrower scope that only involves one of the third parties mentioned and reducing the timeframe from six months to one month.

20. Please note that even if you do modify your request, it is possible that a practical refusal reason under section 24AA may still exist and the Department may need further time to process your revised request. This will depend on the revision you agree to make. As far as is reasonably practicable, we are happy to provide you with further information to assist you in revising your request so that it removes the practical refusal grounds.

Next steps

21. Before the end of the consultation period, which is **COB 12 December 2023** (being 14 days from receiving this notice), you must do one of the following, in writing:
- withdraw the request;
 - make a revised request; or
 - indicate that you do not wish to revise the request.
22. During this period, you can ask me for help 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.
23. If you indicate you do not wish to revise your request, the Department will proceed to make a decision on whether to refuse the request on the grounds that processing your request will result in a diversion of the Department's resources under section 24(1) of the FOI Act.
24. If you do not respond in one of these ways within 14 days (by **COB 12 December 2023**), the request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act.
25. If you need more time to respond, please contact the Information Access Unit via the below contacts, within the 14 day period to discuss your need for an extension of time.

Suspension of processing time

26. Please note under section 24AB(8) of the FOI Act, the time for processing your FOI request is suspended from the day you receive this notice until the day you do one of the things listed above.
27. An extract of the provisions of the FOI Act that are relevant to this notice are set out at **Schedule 1**.

Contact us

28. If you wish to discuss this decision, please do not hesitate to contact the Information Access Unit using the following details:

Post: Information Access Unit,
Department of Veterans' Affairs
GPO Box 9998, Brisbane QLD 4001

Email: Information.Access@dva.gov.au

Yours sincerely,

Jesse (Position Number 62371652)

Information Access Officer

Information Access Unit

Ministerial, International & Stakeholder Relations Branch

Department of Veterans' Affairs

28 November 2023



Schedule of relevant provisions in the FOI Act

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

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.