



FOI Reference: LEX 9873

File No: 24/2291

February 2024

CR

Right to Know

By email: [foi+request-10781-c93d56c5@righttoknow.org.au](mailto:foi+request-10781-c93d56c5@righttoknow.org.au)

Dear CR

***Re: Freedom of Information Request: Internal Review of LEX 9321***

The purpose of this letter is to advise you of the outcome of your request for an internal review of the decision to refuse access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

I have decided to **affirm** the original decision.

***Your request***

On 22 October 2023 you sought access to:

- 1. All internal briefings, memorandums, emails, reports or other documents that were consulted by or provided to Foreign Minister Penny Wong which informed her determination regarding responsibility for the hospital explosion in Gaza.*
- 2. Any documents, including diplomatic cables, intelligence reports, meeting notes or other correspondence within the Department of Foreign Affairs and Trade or exchanged with other government departments/agencies relating to, mentioning, referencing or analysing the hospital explosion in Gaza.*

On 14 November 2023 Ms King wrote to you in accordance with section 24AB of the FOI Act and informed you of her intention to refuse to process your FOI request on the grounds that your request would constitute a substantial and unreasonable diversion of the department's resources.

She also notified you that your request had been combined with 12 other requests and would be treated as a single request (the request). Under section 24(2)(b) of the FOI Act, she was satisfied that all 13 requests related to documents, the subject matter of which was substantially the same, being the Hamas-Israel Conflict.

Ms King advised you in coming to this view the Business Solutions Branch (BSB) had assisted in estimating the resource demands of the request.

BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,
- 14 key word search combinations, being:
  1. "Aid" and "Gaza"
  2. "Gaza"
  3. "Collective punishment"
  4. "Ceasefire"
  5. "Hospital explosion"/ "hospital bombing"
  6. "Al-Ahli" and "Hospital"
  7. "Baptist"
  8. "De-escalation"
  9. "War crimes"
  10. "UNGA vote"/ "UNGA abstention"/ "A/ES-10/L.25"
  11. "Ed Husic", "Anne Aly" and "Tony Burke"
  12. "US assessment"
  13. "intelligence"
  14. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
  - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Ms King advised you that searches completed by BSB identified 72,367 items. This estimate was considered conservative as the searches were confined to the 77 email addresses and did not capture multiple areas within the department, both in Australia and overseas, that were also been identified as potentially holding relevant documents.

BSB were also engaged to undertake searches for cables and were provided with the following search parameters:

- 8 key word search combinations, being:
  1. "Gaza"
  2. "Collective punishment"
  3. "Ceasefire"
  4. "Hospital explosion"/"hospital bombing"
  5. "Al-Ahli hospital"
  6. "De-escalation"

7. "War crimes"
  8. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
- 10 potential to/from locations, including:
    1. Canberra
    2. Tel Aviv
    3. Ramallah
    4. Beirut
    5. Cairo
    6. Amman
    7. Kuwait City
    8. New York UN
    9. Geneva UN
    10. Vienna UN

The results returned 494 cables within the date range 7 October 2023 to 3 November 2023.

In that correspondence, Ms King also invited you to amend your request to one which could be processed and offered to provide assistance to revise your request. To support your consideration of a revised scope, it was noted it may be useful to limit the scope of your request in the following manner:

- limit the type of documents sought, and
- reduce the date range for your request.

On 15 November 2023 you wrote to the department and advised you were considering revising the scope (first possible revision) of your FOI request as follows:

1. *Internal briefings, memorandums, emails, reports or other documents consulted by or provided to Minister Wong from 17-19 October 2023 which formed her determination regarding responsibility for the Al-Ahli Arab Hospital explosion in Gaza.*
2. *Diplomatic cables, intelligence reports, meeting notes or other correspondence within DFAT or exchanged with other agencies from 17 October-15 November 2023 relating to the Al-Ahli Arab Hospital explosion in Gaza.*

You asked the department to advise if the revised request would still substantially and unreasonably divert departmental resources.

That same day the department wrote to you and advised:

*The right of access applies to documents that exist at the time the FOI request was made (paragraph 2.34 of the FOI Guidelines). Your request was made at 11:43pm on 22 October 2023. This means the date range for part 2 of your request will be 17*

*October to 22 October 2023. Should you wish to withdraw this request and make a new FOI request for a larger date range it is open to you to do so.*

The department also advised you of certain agencies that were exempt from the operation of the FOI Act and advised you that:

*If there are any intelligence documents relevant to the scope of your revised request and the above applies, these documents will be exempt from the operation of the FOI Act. Accordingly you may also wish to consider excluding intelligence reports from the revised request.*

You responded again and advised you were considering revising the scope (second possible revision) of your request to:

- 1. Internal briefings, memorandums, emails, reports or other documents consulted by or provided to Minister Wong from 17-19 October 2023 which formed her determination regarding responsibility for the Al-Ahli Arab Hospital explosion in Gaza.*
- 2. Diplomatic cables, meeting notes or other correspondence within DFAT or exchanged with other agencies from 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*

You also sought the department's advice on limiting documents, sought insight as to what type of documents were identified as voluminous in the preliminary search and sought the department's suggestions as to what was reasonable in the circumstances.

On 16 November 2023, after consulting Cyber Security and Networks Branch (CRB) and asking them to conduct targeted searches, the department advised you:

*Our cyber team has re-run a department wide search for **emails** based on your revised search and containing the search terms "Ali-Ahli Arab Hospital" and "Hospital Explosion" and "Hospital Bombing" and "Ali-Ahli" AND "Hospital" for the date range 17 October 2023 to 19 October 2023 and identified **37,939 items**.*

*The retention of emails in your revised scope will not resolve the practical refusal reason. You may instead consider limiting your correspondence to a particular Branch or Division within the department. Or if you were to focus on a document type then to diplomatic cables or briefs sent to the Foreign Minister/or her office only.*

*Notwithstanding this your request has been combined with 12 other requests, so it is also dependant on the replies of the rest of the cohort. We are working with each applicant to reasonably reduce the scope of the request."*

That same day you responded and asked:

*If I excluded all emails without attachments would this help? I presume the most important correspondence regarding the hospital explosion would be of document form (such as pdf or word document, or images of meeting notes, etc.)*

On 17 November 2023, after re-engaging CRB in relation to your request, the department advised you:

*We have run further searches for you and confirm that excluding emails without attachments reduces the number of results from 37939 to 8112 items and would not resolve the practical refusal reason.*

That same day you responded and asked:

*Might I suggest excluding duplicate emails as well as early parts of email threads that are fully contained within later emails in the thread? I would expect this approach to substantially reduce the number of emails.*

To which the department advised:

*This would require manual examination and comparison of each email to determine what is in and out of scope and would not resolve the practical refusal reason.*

*As previously advised and as supported by the three searches undertaken by cyber, the retention of [department wide] emails in your revised scope will not resolve the practical refusal reason. You may instead consider limiting your correspondence to a particular officer, Branch or Division within the department.*

*Or focus on a particular document type, such as diplomatic cables.*

You then responded and asked:

*Could you please provide details on the roles and responsibilities of each branch within the department? I am seeking information pertaining to the investigation of or communications regarding the hospital explosion. Is there a specific branch that handled either the investigation into or dissemination of information about the hospital explosion?*

The department then provided you with access to publicly available links on the department's website, including the department's organisational structure and information on the department's Crisis Hub, including the department's response to the Hamas-Israel conflict.

That same day you responded and advised you were considering another revision (third possible revision):

1. *Internal briefings, memorandums, emails, reports or other documents consulted by or provided to Minister Wong from 17-19 October 2023 which formed her*

*determination regarding responsibility for the Al-Ahli Arab Hospital explosion in Gaza.*

2. *Diplomatic cables dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
3. *Meeting notes and minutes produced within DFAT between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
4. *Correspondence exchanged between DFAT and other government agencies dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
5. *Internal correspondence and communications within DFAT's International Security, Legal and Consular Group dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*

You also asked the department to advise if the third possible revision would still substantially and unreasonably divert departmental resources.

That same day the department advised:

*Part 4 and 5 of your suggested revised request, for example, adds an additional 3 days to the timeframe. Accordingly it is unlikely this will resolve the practical refusal reason.*

*Without undertaking further searches, it appears that only part 2 of your request would be processable. Notwithstanding this your request has been combined with 12 other requests, so it is also dependant on the replies of the rest of the cohort. We note we are actively working with each applicant to reasonably reduce the scope of the request.*

*If you would like to proceed with part 2 of your request, you may wish to consider withdrawing your current request and putting in a new request for part 2 only.*

*Otherwise, we will undertake fresh searches once your and all other revised scopes have been received.*

That same day you responded and advised that you were satisfied that a practical refusal reason no longer exists for the below-revised request:

1. *Internal briefings, memorandums, emails, reports or other documents consulted by or provided to Minister Wong from 17-19 October 2023 which formed her determination regarding responsibility for the Al-Ahli Arab Hospital explosion in Gaza.*
2. *Diplomatic cables dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*

3. *Meeting notes and minutes produced within DFAT between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
4. *Correspondence exchanged between DFAT and other government agencies dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
5. *Internal correspondence and communications within DFAT's International Security, Legal and Consular Group dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*

This was accepted as the revised scope for your part of the request.

Each applicant was consulted separately on the request and had fourteen days from the date of receipt of the consultation notice to:

- (a) withdraw their part of the request,
- (b) revise the scope of their part of the request, or
- (c) notify the department that they did not wish to revise the scope of their part of the request.

### ***Original decision***

On 30 November 2023 Ms King decided to refuse your request for access on the basis that a practical refusal reason existed, a request consultation process had been undertaken and the practical refusal reason still existed despite your revised request (section 24(1)(b) of the FOI Act).

In considering whether a practical refusal reason existed, Ms King considered the time and resources that would be involved in processing your request and consulted again with colleagues in BSB to obtain an estimate of the probable resource demands posed by your FOI request.

Based on revised estimates provide by the line area, Ms King found that, despite your submissions in your email dated 17 November 2023 in which you stated that you were satisfied that a practical refusal no longer exists, your request still captured a large volume of material. This was also foreshadowed to you that same day when you were advised that it was unlikely your suggested revised scope would resolve the practical refusal reason and it was advised that only part 2 of your request would likely be processable.

In refusing your request Ms King advised you that BSB had been engaged to undertake searches for diplomatic cables and were provided with the following parameters:

- a date range of 17 October 2023 to 19 October 2023, and
- key word search terms of:

- "Al- Ahli Arab Hospital"
- "Hospital explosion"/"hospital bombing"
- "Al-Ahli" and "Hospital".

She advised that searches completed by BSB identified 12 items within the search parameters.

Additionally, CRB were engaged to undertake department wide searches for emails and were provided with the following search parameters:

- a date range of 17 October 2023 to 19 October 2023, and
- key word search terms of:
  - "Al-Ahli Arab Hospital"
  - "Hospital explosion"
  - "hospital bombing"
  - "Al-Ahli" AND "Hospital".

Searches completed by CRB identified 37,939 items within the search parameters.

Ms King also advised that, as noted in the department's email to you on 17 November 2023, your revised scope added an additional 3 days to the timeframe already searched. In addition to adding 3 days to the search parameters, a manual review of each document would be required to determine whether the documents are within the scope of each part of your request, and whether each document contains material that would be exempt from release.

You were also advised that given you requested emails sent to the Foreign Minister, correspondence exchanged between DFAT and other government agencies and internal correspondence within the International Security, Legal and Consular Group (where the Crisis Centre is located within) that she considered a significant portion of the 37,939 items from the two days already searched would be relevant to the scope of your request.

She also advised that she considered this estimate to be conservative estimate as there were other areas of the department who may hold documents, including the team with responsibility for the department's parliamentary document management system.

Ms King advised you that she was satisfied that even if your request was not combined with the 12 other requests, your request alone would still constitute a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Therefore, it was decided that processing the request would substantially and unreasonably divert the department's resources from its other operations (section 24AA(1) of the FOI Act). Ms King noted that you may wish to consider submitting a new FOI request, further revising the scope of your request.



## ***Internal review***

On 7 January 2024 you wrote to the department requesting an extension of the timeframe to seek internal review of Ms King's decision, citing it would be preferable to initiating an external review by the Information Commissioner.

On 8 January 2024 the department agreed to an extension of time to seek internal review of the original decision.

That same day you requested an internal review of your part of the original decision, being LEX 9321, and sought review on the following grounds:

- 1. The estimated volume of emails (37,939) identified by the department came from a search across the entire department, rather than limiting the search to the specific branch/area requested (International Security, Legal and Consular Group). This resulted in an overbroad collection of documents that does not accurately reflect the scope of the request. A more targeted search and sampling of documents from the relevant area, as suggested by the Guidelines, would provide a more accurate estimate of the work required.*
- 2. The estimates of time required do not appear to account for likely exclusions of duplicate emails, or parts of email threads contained in later emails, which could substantially reduce the volume.*
- 3. The department did not provide adequate information or analysis to indicate how processing this request would unreasonably divert resources in a way that impacts the core functions of the agency, as required by the guidelines. Processing of a request is only considered an unreasonable diversion of resources if it can be shown to substantially impact the core functions of the agency. Large agencies with dedicated FOI resources may not find even complex requests to be unreasonable in these terms.*
- 4. The public interest in disclosure is a factor that must be considered under section 24AA, not just resource impact.*
- 5. I cooperated extensively to refine and limit the scope of the request, which weighs against finding it to be an unreasonable diversion.*
- 6. The department failed to provide estimated timelines, explain technical difficulties, or suggest a reasonable request as outlined in the FOI Guidelines to assist with the consultation process.*
- 7. The department's failure to adhere to the requirements of section 24AB may constitute a procedural defect and invalidate the practical refusal decision.*

## ***Decision***

I am an officer authorised under section 23 of the FOI Act to conduct an internal review of the original decision. I had no part in the original decision-making process.

I have made a fresh decision in accordance with section 54C of the FOI Act. I have decided to affirm the original decision of 30 November 2023. The reasons for my decision are set out below.

In making my decision I have taken into account:

- your original request,
- advice from the areas of the department that conducted document searches,
- your revised request and correspondence relating to the revision,
- together with the original decision,
- the FOI Act,
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act ('FOI Guidelines'), and
- I have also taken into account submissions made in your request for internal review dated 8 January 2024.

Sections of the FOI Act referenced in my decision letter can be found online at [www.legislation.gov.au](http://www.legislation.gov.au). Parts of the FOI Guidelines referenced can be found online at [www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines](http://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines).

You have limited your request for internal review to your part of the request, being LEX 9321. For completeness, I note that your request was combined with 12 other requests under section 24(2)(b) of the FOI Act, as Ms King was satisfied that all 13 requests related to documents, the subject matter of which was substantially the same, being the Hamas-Israel Conflict.

Having considered the outcomes for the section 24AB consultations for each part of the request, I am also satisfied that the requests, as combined, constituted a substantial and unreasonable diversion of the department's resources and **affirm** Ms King's decision to refuse the request under section 24(1)(b) of the FOI Act.

Notwithstanding this Ms King determined that she was satisfied that even if your request had not been combined, your request alone would still constitute a substantial and unreasonable diversion of the department's resources and refused your request under section 24(1)(b) of the FOI Act. I am also satisfied that your request alone would still have constituted a substantial and unreasonable diversion of the department's resources, even if it had not of been combined. As your request for internal review focuses on your part of the request, my reasoning below focuses on your submissions and LEX 9321 only.

## **Reasons**

### *Practical refusal reason*

The FOI Act provides that an agency may refuse a request if a 'practical refusal reason' exists (section 24(1) of the FOI Act). A practical refusal reason exists where the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations (section 24AA(1)(a)(i) of the FOI Act).

In deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities (section 24AA(2) of the FOI Act):

- identifying, locating or collating the documents within the filing system of the agency,
- examining the documents,
- 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,
- consulting with any person or body in relation to the request,
- making copies, or edited copies, of the documents, and
- notifying an interim or final decision to the applicant.

I have considered these activities in considering the resources necessary to process your part of the request. Having had regard to the complex and voluminous nature of the request, I am satisfied that processing the request would substantially and unreasonably divert the resources of the department from its other operations. I am satisfied that a practical refusal reason exists.

I have considered your first submission that stated:

1. *The estimated volume of emails (37,939) identified by the department came from a search across the entire department, rather than limiting the search to the specific branch/area requested (International Security, Legal and Consular Group). This resulted in an overbroad collection of documents that does not accurately reflect the scope of the request. A more targeted search and sampling of documents from the relevant area, as suggested by the Guidelines, would provide a more accurate estimate of the work required.*

Firstly, your request was not limited to only the International Security, Legal and Consular Group (ISG) only. Rather, you requested various document types, and relevantly to the above references search results:

1. emails sent to the Foreign Minister (part 1 of your revised request),
2. correspondence exchanged between DFAT and other government agencies (part 3 of your revised request), and
3. and internal correspondence within the International Security, Legal and Consular Group (ISG) (part 5 of your revised request).

The Crisis Centre was also operating as part of ISG, and therefore any emails from the Crisis Centre were captured in part 5 of your request. Therefore, considering that your request was not limited to ISG only and that ISG would have generated the largest volume of documents due to operating the Crisis Centre, I consider that a significant portion of the 37,939 emails would be relevant to the scope of your request and this was a targeted search.

I also consider this to be a conservative estimate at this search was conducted for the period 17 October 2023 to 19 October 2023 and your request in parts 4 and 5 seeks an additional 3 days up to 22 October 2023.

Additionally, as advised to you on 14 November 2023, when Ms King first wrote to you in accordance with section 24AB of the FOI Act, BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,
- 14 key word search combinations, being:
  15. "Aid" and "Gaza"
  16. "Gaza"
  17. "Collective punishment"
  18. "Ceasefire"
  19. "Hospital explosion"/ "hospital bombing"
  20. "Al-Ahli" and "Hospital"
  21. "Baptist"
  22. "De-escalation"
  23. "War crimes"
  24. "UNGA vote"/ "UNGA abstention"/ "A/ES-10/L.25"
  25. "Ed Husic", "Anne Aly" and "Tony Burke"
  26. "US assessment"
  27. "intelligence"
  28. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
  - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Ms King advised you that searches completed by BSB identified 72,367 items. This estimate was considered conservative as the searches were confined to the 77 email addresses and did not capture multiple areas within the department, both in Australia and overseas, that were also been identified as potentially holding relevant documents.

Whilst this is a larger search perimeter in terms of key word combinations, this search was confined to 77 email addresses. In coming to this decision I have consulted the ISG Hub and

they have advised that as of 17 November 2023 (when the department was assisting you to revise the scope of your request) there were 834 employees in ISG alone. I am therefore satisfied that the department undertook targeted searches when processing your request and that the results of searches are conservative. The addition of over 750 additional inboxes, many of which were working to respond to the crisis, satisfies me that the 37,989 emails identified is a reasonable estimate of the volume of emails alone, that would be captured by the scope of your request.

This estimate did not include internal briefings, memorandums, reports, diplomatic cables or meeting notes and minutes which you also requested in parts 1 to 3 of your request and is therefore considered to be conservative.

I have considered your second submission that stated:

- 2. The estimates of time required do not appear to account for likely exclusions of duplicate emails, or parts of email threads contained in later emails, which could substantially reduce the volume.*

As advised on 17 November 2023, manual examination and comparison of each email would be required to determine what was in and out of scope of your request. I did not consider this to be a reasonable exercise to undertake, given that the starting position was 37,989 emails alone for a period of 3 days, when your request was for a period of six days.

Again, this estimate did not include internal briefings, memorandums, reports, diplomatic cables or meeting notes and minutes which you also requested in parts 1 to 3 of your request and is therefore considered to be conservative.

I have considered your third, fourth, fifth and sixth submissions that stated:

- 3. The department did not provide adequate information or analysis to indicate how processing this request would unreasonably divert resources in a way that impacts the core functions of the agency, as required by the guidelines. Processing of a request is only considered an unreasonable diversion of resources if it can be shown to substantially impact the core functions of the agency. Large agencies with dedicated FOI resources may not find even complex requests to be unreasonable in these terms.*
- 4. The public interest in disclosure is a factor that must be considered under section 24AA, not just resource impact.*
- 5. I cooperated extensively to refine and limit the scope of the request, which weighs against finding it to be an unreasonable diversion.*
- 6. The department failed to provide estimated timelines, explain technical difficulties, or suggest a reasonable request as outlined in the FOI Guidelines to assist with the consultation process.*

### *Information to process the request and revising the scope of our request*

The department provided a large volume of information to you in the extensive back and forth of emails between yourself and the department on 15, 16 and 17 November 2023. The department provided extensive assistance to assist you to revise the scope, including assisting you with three potential revisions to the scope. In doing so the department engaged and re-engaged business areas to undertake additional searches for your part of the request specifically.

I do not consider that your request was limited. Rather, in your first suggested revision rather than limiting the scope of your request, you expanded it so that the date range was over a month, rather than the original date range of 5 days.

In your second suggested revision, while you agreed to remove documents that were likely exempt from the operation of the FOI Act, your request still captured multiple document types and had the original date range of much your original request, which did little to change the volume of documents captured by the scope of your request.

During this period you explored removing attachments to emails which reduced the scope of your request, but not enough to resolve the practical refusal reason. In your third suggested revision, you expanded your request from two parts to five parts and again still captured multiple document types and had the original date range for much of the request. You also did not exclude attachments to emails, bringing the number of documents back up to the original estimate. Throughout this period, the department advised you that the expanded scope would not resolve the practical refusal reason.

### *Notification of diverted departmental resources*

On 24 October 2023 the department sought your agreement to an extension of time advising you that the relevant business area was diverted to manage matters relating to the crisis and required the additional time to manage competing priorities whilst also undertaking the relevant search and retrieval. On 28 October 2023 you declined the extension of time request.

Additionally on 14 November 2023, Ms King advised you that at that time over ten percent of the workforce had been diverted to respond to the crisis, with shifts operating 24/7 and that the relevant officers working in the department's crisis response centre (which is part of ISG) had been unable to undertake searches to provide advice on sensitivities as a priority. I am satisfied that you were provided information as to how the department's resources were already substantially diverted and that processing such a large request would constitute an unreasonable diversion of the department's, already diverted, resources. I would also note that servicing your request requires extensive engagement from the areas of the department managing the crisis, not just the FOI team.

### *Public interest and other factors*

As outlined in paragraph 3.117 of the FOI Guidelines, whilst you are correct that whether there is a significant public interest in the documents requested is a matter that may be relevant in deciding if a practical refusal reason exists, and there is a public interest in these documents, this was outweighed by public interest in the department responding to the crisis. That is why over ten percent of the workforce was diverted to respond, with shifts operating 24/7. I considered the other relevant factors outweighed this factor, including:

- the staffing resources available to an agency or minister for FOI processing,
- the impact that processing a request may have on other work in an agency or minister's office, including FOI processing, and
- whether an applicant has cooperated in framing a request to reduce the processing workload.

### *Technical difficulties and assisting you to revise your request*

I am satisfied that the department both tried to seek extensions of time and explain the technical difficulties of processing your request to you.

The department's extensive correspondence with you on 14, 15, 16 and 17 November 2023, as well as the evidences how the department's core functions would be impacted and the I am satisfied that the department assisted you extensively to revise the scope of your request.

In relation to your submission that the department failed to suggest a reasonable request on 14 November 2023, Ms King advised you that to support your consideration of a revised scope it may be useful to:

- limit the type of documents sought, and
- reduce the date range for your request.

You did not do so in a meaningful way.

Additionally, on 17 November 2023, the department advised you:

*Without undertaking further searches, it appears that only part 2 of your request would be processable. Notwithstanding this your request has been combined with 12 other requests, so it is also dependant on the replies of the rest of the cohort. We note we are actively working with each applicant to reasonably reduce the scope of the request.*

*If you would like to proceed with part 2 of your request, you may wish to consider withdrawing your current request and putting in a new request for part 2 only.*

You did not revise the scope of your request or submit a new request as suggested.

I have considered your seventh submission that stated:

*7. The department's failure to adhere to the requirements of section 24AB may constitute a procedural defect and invalidate the practical refusal decision.*

Where an agency is satisfied that a practical refusal reason exists, they must undertake a request consultation process before making a decision to refuse the request (section 24AB of the FOI Act).

If the applicant contacts the agency during the consultation period, then the agency must take reasonable steps to assist the applicant to revise the request so the practical refusal reason no longer exists (section 24AB(3) of the FOI Act).

Section 24AB(4) of the FOI Act explains that 'reasonable steps' include:

- 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.

Having considered the correspondence sent to you on 14, 15, 16 and 17 November 2023, in accordance with section 24AB of the FOI Act, I am satisfied that the consultation requirements of section 24AB(2) of the FOI Act have been complied with.

Agencies are only obliged to undertake a request consultation process once for any particular request (section 24AB(9) of the FOI Act) and I note that the department assisted you with three possible revisions before you revised the scope of your request.

Having had regard to the circumstances, the department's correspondence with you, and section 24AB of the FOI Act, I am satisfied the department discharged its obligations to take reasonable steps to assist you to revise your request.

Having had regard to the voluminous nature of the request, I am satisfied that processing the request would substantially and unreasonably divert the resources of the department from its other operations. I am satisfied that a practical refusal reason exists.

### **Conclusion**

Based on all the factors above, as well as the search results, I am therefore of the opinion that a practical refusal reason exists (and would have existed whether your request was combined with the other 12 or not), that a 'request consultation' process had been undertaken, and the practical refusal reason still exists notwithstanding your revised request (section 24(1)(b) of the FOI Act). I have decided to **affirm** the original decision.

I note that it is open for you to make a new request. As advised in Ms King's original decision and outlined above, part 2 of your request may be processable. You may wish to consider submitting a request seeking access to part 2 only.



**Review**

Your review rights are set out in the Attachment for your reference.

Should you have any queries regarding this matter please contact the FOI Section by email to: [foi@dfat.gov.au](mailto:foi@dfat.gov.au).

Yours sincerely



Lauren Henschke  
Assistant Secretary  
Department of Foreign Affairs and Trade

**Your review rights**

*Australian Information Commissioner*

Under the provisions of section 54L of the FOI Act, you are entitled to request a review by the Australian Information Commissioner of my access decision. You may also make a complaint to the Australian Information Commissioner under section 70 of the FOI Act about the Department's performance of its functions or the exercise of power under the FOI Act.

Your request for review or complaint should be directed to:

Office of the Australian Information Commissioner  
GPO Box 5218  
Sydney NSW 2001  
Telephone: 1300 363 992  
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Further information on applying for an Australian Information Commissioner review is available at: [www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews](http://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews).

Further information about how to make a complaint is available at: [www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints](http://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints).