



Request consultation notice due to existence of a practical refusal reason

Applicant: Mr Trent Morrison-Francis

Notice date: 20 March 2024

LEX reference number: LEX 62195

Sent by email: foi+request-10814-143d0158@righttoknow.org.au

Dear Mr Morrison-Francis,

Information Access Request: LEX 62195 and MR23/01528

Purpose of this notice

1. The purpose of this notice is to undertake an informal consultation process prior before providing you with a statement of reasons in accordance with paragraph 3.161 of the FOI Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*:

“Where an access refusal decision is deemed to have been made before a substantive decision is made, the agency or minister continues to have an obligation to provide a statement of reasons on the FOI request. This obligation to provide a statement of reasons on the FOI request continues until any IC review of the deemed decision is finalised.”

2. No statutory powers under the *Freedom of Information Act 1982* are being exercised in this informal process. Any reference to statutory provision in this notice should not be taken as the Department exercising a power under the FOI Act.
3. 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.

Authority to make decision

4. I, Joshua (Position Number 62336362), Assistant Director, 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.

Scope of your request

5. On 31 October 2023 you made a request for access to documents in the possession of the Department. Your request sought access to:

'...I am seeking:

All active Memorandum of Understanding, Heads of Agreement, Data Sharing Agreements, and Service Contracts that result in the sharing of veteran data, even if de-identified.

Similar documents for programs that ceased within the last 10 years....'

6. On 1 November 2023, the Department acknowledged your request via email.
7. On 21 November 2023 I requested further clarification in relation to your scope and whether there were any opportunities to further refine it.
8. On 25 November 2023 you responded with the following:

'...Dear INFORMATION.ACCESS,

I am asking for any agreements that affect more than 10 veterans where your department provides veterans data to a third party such as University for SA, Services Australia, RSL etc...'

Power to refuse a request

9. 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.

10. 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 7 days to respond to this notice in one of the ways set out below. 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

11. 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.

Request is substantial

12. 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.
13. Further, we have identified 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 processing;

- the impact that processing a request may have on other work in the agency, including 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.

14. Based on the original scope and the clarification received on 25 November 2023 the business area have redirected 4 staff from their current duties who have accumulated approximately 60 hours conducting manual and thorough searches within records management systems, internal drives, coordinated several meetings to locate the documents requested, as well as review the documents found. To date, it is approximated that only 3 years' worth of documents have been located, mainly consisting of Memorandum of Understanding (MoU). The scope is for the past 10 years and the business area have calculated that it would take an additional 125-150 hours of work in order to source and review the remaining 7 years of documents within your request, when you extrapolate the time taken already for only the first 3 years. In addition to what the business area has been able to locate, they have also indicated that additional searches will need to be conducted by all Divisions within DVA, requesting additional resources in order to locate agreements that each Division is responsible for. Upon location of these additional agreements, those Divisions will also be required to review and analyse. Additionally, there will be documents found that are between DVA and various external agencies. These external agencies could be other government departments, businesses within the private sector, educational institutions, or medical providers to name a few. Requested documents that relate to multiple third parties and their personal and or business information will require third party consultations.

15. Based on the documents currently on hand, it is estimated that conservatively, DVA will require an additional 117 hours of processing time to clear the documents currently located. The reasons for this are as follows:

- Based on the documents currently on hand, it is estimated that there are approximately 2000 pages of material relevant to your request based on a highly conservative average of 10 pages per document. These 2000 pages are contained over 200 documents identified as being relevant to your request.

- The business area have calculated, based on the documents they have been able to locate that it would still require an additional 50 hours of work to review and comment for clearance to the IAU.
- As there currently approximately 2000 pages within the documents we have been able to locate. Assuming this material can be converted, collated, analysed, and exemptions applied at a minimum average of 2 minutes per page, this equates to approximately 67 hours of processing time.
- Further to the previous point, a statement of reasons will need to be provided to you. I anticipate that it would take approximately 2 hours to draft the statement of reason for this decision.
- In addition to the above is the extra time that will be required to complete the request in its entirety. The business area have indicated an additional minimum of 125 hours to source the documents. There would also be the times associated with all DVA Divisions conducting their own searches and reviews, as well as the processing times required by the IAU to provide this to the applicant.

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

Request is unreasonable

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

- 117 hours of processing time for what is currently available is, at face value, an unreasonable burden for a single 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 applicants and for the relevant business area to undertake their designated duties.
- As aforementioned, 4 staff were previously removed from their business as usual responsibilities in order to obtain documents related only to the past 3 years. The business area would require the continued application of those 4 staff in order to complete your request. The 4 staff represent 10% of the business areas' capabilities and taking them from their business as usual responsibilities would be of detriment to their overall capabilities and various stakeholders.

- Additionally, each Division within the Department would be required to source and review documents within the scope of the request. With over 10 Divisions within DVA, this would at minimum require an additional 2 staff per Division in order to source, analyse, and clear with the Information Access Unit.
- At a minimum, it is anticipated that 25 staff within the Department, when you include the Information Access Officer, that would be required at various APS and SES levels in order to process this request, taking them away from their business as usual responsibilities in supporting Veterans' and their Families through the various programs available within DVA.
- While there is a level of interest related to DVA's sharing of data, the public interest has been focused on the Medicines Advice and Therapeutics Education Services (MATES) program and the consent surrounding it. The scope of the request expands beyond the MATES program and during informal consult, the scope was not reframed nor clarification provided in a way that would reduce the current processing workload and there is little evidence to suggest that there is a significant public interest in the documents, outside of those related specifically to the MATES program.
- 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.

18. 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

19. You now have an opportunity to revise your request so that the grounds for a practical refusal are removed.
20. 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.
21. 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

22. In your scope you requested *“Memorandum of Understanding, Heads of Agreement, Data Sharing Agreements, and Service Contracts that result in the sharing of veteran data, even if de-identified.”* In line with your request, you could amend your request to be for *“all Data Management Agreements (DMA's)”*. The reason for this is that these agreements will be similar to the agreement that was in place for the MATES program.
23. Please note that even if you do modify your request, it is possible that a practical refusal reason 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

24. Before the end of the consultation period, which is **COB 27 March 2024** (being 7 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.
25. 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.
26. If you indicate you do not wish to revise your request, the Department will proceed to make an informal decision on whether to refuse the request on the grounds that processing your request will result in a diversion of the Department’s resources.
27. If you do not respond in one of these ways within 7 days (by **COB 27 March 2024**), the request will be taken to have been withdrawn.

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,

Joshua (Position Number 62336362)

Assistant Director

Information Access Unit

Ministerial, International & Stakeholder Relations Branch

Department of Veterans' Affairs

20 March 2024