



Trent Morrison-Francis
c/- Right to Know website

Our reference: 1-100BRRC2
Contact Officer: R Rutten
Email: FOI@ato.gov.au
Date: 10 November 2023

Notice of intention to refuse your request for access to documents

Dear Mr Morrison-Francis,

1. I refer to your request for access to documents under the *Freedom of Information Act 1982 (FOI Act)* from the Australian Taxation Office (**ATO**) made via the 'Right To Know' website and received by our office on 31 October 2023.
2. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions regarding access to documents.
3. After having carefully considered your request, I am satisfied that a 'practical refusal reason', within the definition in subparagraph 24AA(1)(a)(i) of the FOI Act, exists in respect of your request because the work involved in processing the request would substantially and unreasonably divert the ATO from its other operations.
4. On this basis, I intend to refuse you access to the documents you have 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 process' 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. On 31 October 2023, via the 'Right To Know' website, you requested access to:

"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. I am looking for similar documents for programs and agreements that ceased within the last 10 years or are still active."

7. I am satisfied that a 'practical refusal reason' exists due to the broad scope of your request, the significant time period you have set out in your request, and the resources that would be required to search and consult with a significant number of officers across the ATO and with external entities.
8. Subparagraph 24AA(1)(a)(i) provides that a 'practical refusal reason' exists in relation to a request for documents if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.
9. Subsection 24AA(2) provides that, in deciding whether a 'practical refusal reason' exists, the ATO must have regard to the resources used for:
 - (a) Identifying, locating, or collating the documents within the filing system of the ATO;

- (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 the document; and
 - (c) Notifying any interim or final decision on the request.
10. Whether a 'practical refusal reason' exists will be a question of fact in the individual case and the resources available at the time the request is made.
 11. The broad terms of your request mean that every document that provides for the sharing of data over the past 10 years would potentially fall within the scope of your request, as every data sharing arrangement could potentially include the sharing of data that relates to a veteran even if it does not specifically concern their status as a veteran. This is because the data of a person who is a veteran may be subject to a data sharing arrangement for a reason other than them being a veteran.
 12. In addition, the ATO is party to a number of Memorandum of Understanding (**MOU**) and other documented arrangements, some of which may have been varied at different times, and as such seeking all active documents as well as arrangements that have ceased within the last ten years would require a substantial search and would likely return a significant number of documents that were created before 2013. As such, this would require officers in all relevant ATO business lines to search for archived documents that fall within the already broad scope of your request.
 13. I consider that to undertake such a search would require a substantial amount of ATO resources, including requiring relevant officers across all relevant business areas within the ATO to identify every single document that falls within the scope of your request. This would take a substantial amount of time and would require that these officers divert resources from their ordinary duties.
 14. Further, the nature of the documents that you have requested means that the FOI decision-maker would need to consult with the other party or parties to each and every MOU or other documented arrangement to provide them an opportunity to comment on any FOI exemptions that may apply to the documents. Due to the substantial number of documents that I expect would fall within the scope of your request, I consider that this would demand a substantial and unreasonable diversion of resources away from the FOI decision-makers other duties.
 15. Further time would also be needed to review each of these documents that are identified as falling within the scope of your request to identify potential exemptions, prepare the documents for release (including editing documents to remove exempt information, converting and compiling the documents into a releasable format), produce a schedule of documents and draft a final decision letter regarding your request.
 16. For the reasons detailed above, I am unable to provide you with an estimate of the time it would take to process your request in its current form without first requiring a substantial number of ATO officers across multiple business areas to divert their resources from their regular duties to conduct lengthy searches to identify all relevant documents. I am, however, satisfied that searching for, consulting, reviewing, making a decision on, and processing your FOI request in its current form would substantially and unreasonably divert the resources of the FOI decision-maker and officers in the relevant business areas from their other operational requirements.

Request consultation process and next steps

17. You now have an opportunity to revise your request to remove the 'practical refusal reason' and enable it to proceed.
18. The request consultation period runs for 14 days and starts on the day after you are given this notice. Before the end of the consultation period, you must do one of the following, in writing, otherwise your request will be taken to have been withdrawn pursuant to section 24AB(7) of the FOI Act:
 - a. Withdraw your request;

- b. Make a revised request; or
 - c. Tell us you do not wish to revise your request.
19. During this period, you are welcome to seek assistance by contacting me at FOI@ato.gov.au to discuss this notice. 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 the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the time limit for processing your request.
20. If you indicate that you do not wish to revise your request, I will proceed to make a decision on whether to refuse the request on a practical refusal ground under subsection 24(1) of the FOI Act.
21. Given the nature of your request, it is difficult to offer you suggestions on how you can reduce the scope of your request to make a search for relevant documents manageable. However, you may wish to consider revising your request to specify a particular arrangement, or a more specific class of arrangements, limiting your request to data about veterans in their capacity as a veteran, and/or for a shorter time period.
22. It is anticipated that a significant revision to the scope of the request will be required to remove the 'practical refusal reason' and enable the matter to proceed.
23. Further, you can find information on current data-matching protocols to which the ATO is a party on the ATO website here: <https://www.ato.gov.au/general/gen/data-matching-protocols/>. You will also find copies of various MOUs that have previously been released under the FOI Act on the ATO FOI disclosure log here: <https://iorder.com.au/foi/SearchFoi.aspx>.

For more information

24. If you would like to revise your request or have any questions, please contact me at FOI@ato.gov.au.

Yours sincerely

R Rutten
Acting Principal Lawyer
Office of General Counsel
Australian Taxation Office