



28 November 2023

Trent Morrison-Francis
BY EMAIL: foi+request-10822-878b3338@righttoknow.org.au

In reply please quote:

FOI Request: FA 23/11/00009
File Number: FA23/11/00009

Dear Trent Morrison-Francis

I refer to your email dated 31 October 2023, in which you requested access to documents held by the Department of Home Affairs (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

You have requested access to the following:

*I, Trent Morrison-Francis, am requesting access to documents under the Freedom of Information Act 1982. Specifically, 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. I am looking for similar documents for programs and agreements that ceased within the last 10 years or are still active.
I prefer to receive these documents electronically via the Right to Know system by responding to the email through which this request has been sent.*

Intention to refuse request

I am writing to advise you that I intend to refuse your request on the basis that a practical refusal reason exists. However, before I make a final decision to do this, 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.

Power to refuse request

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.

Practical refusal

A *practical refusal reason* exists under section 24AA of the FOI Act if either (or both) of the following applies:

- (1)(a)(i) the work involved in the processing of the request would substantially and unreasonably divert the resources of the Department from its other operations
- (1)(b) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires you to provide such information concerning the document you are seeking access to, to enable the Department to be able to identify it.

I consider that the work involved in the processing of the request would substantially and unreasonably divert the resources of the Department from its other operations, and accordingly that practical refusal reasons exist under section 24AA(1)(a)(i) of the FOI Act.

Reasons for practical refusal

The Department has made a preliminary assessment of the documents that would be captured by your request. The Procurement Reporting team has identified over 17,000 documents that may be captured by your request by undertaking the following searches in relation to this FOI request:

- Contract description keyword
 - Using keyword such as 'veteran/s' and 'de-identified data', however, no matching result was identified.
- Vendor base contract search
 - Noting ABS holds all current and historic census information that may contain veteran data, the team also conducted an MOU search on any MOUs the Department has entered into with ABS, but did not identify any MOU that is related to the exchange of veteran data.

The only potential way the responsible business area could determine whether the Department has any arrangements in relation to the FOI request would be to review each individual contract terms and conditions that the Department holds. Overall, the Department has reported more than 17,000 contracts on AusTender over the past 10 years (between 1 November 2013 to 13 November 2023), excluding some MOUs that were not AusTender reportable.

Whilst the Department has identified that it holds 17,000 potentially relevant documents in its electronic systems, it would take the Department an average of 30 seconds per document to actually search for and retrieve each of those relevant documents. As such, I estimate that it would take the Department an estimated **141 hours** to search for, identify and retrieve the 17,000 potentially relevant documents from its electronic systems.

In the event that all these documents would actually be relevant to your request, based on an average of 1 minute per document, a further **283 hours** would be required to collate and create a schedule of the 17,000 potentially relevant documents. This would include the retrieval of any emails which incorporate attachments and the collation of those attachments.

In the event that the Department was to continue to process your request, a decision would need to be made on access to those documents. Based on an estimate that each document is at least two pages in length, and that the decision maker would require at least three minutes to review and assess each page for relevant exemptions, I estimate that it would take at least **1,700 hours** to complete a decision on access to the documents potentially identified as being relevant to your request.

As such, a minimum total estimated time of **2,125 hours** would be required to process this request.

I note that in *VMQD and Commissioner of Taxation* [2018] AATA 4619 (17 December 2018) Commissioner, SM Puplick commented that:

What constitutes valid practical refusal grounds is thus agency specific and resource dependent. Nevertheless for any agency, a burden in excess of 200 hours would almost certainly make the threshold of a rational and objective test.

I am satisfied that the Department would be required to divert significant resources from its current operations in order to identify, locate and collate the documents held within the Department, and to make a decision on access to those documents. This diversion would result in a significant drain on the resources of the area within the Department that would be required to process this request.

I consider that this would result in this request imposing both a substantial and an unreasonable diversion of resources of the Department from its other operations and that a practical refusal reason exists in relation to this request.

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

You may consider significantly narrowing down the scope of your request by focussing on exactly what is critical to your requirements.

Under section 24AB(6) of the FOI Act, you have 14 days (to do one of the following:

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

If you do not do one of the three things listed above during the consultation period- (14 days), **Friday 15 December 2023**, or you do not consult the contact person listed below during this period, your request will be taken to have been withdrawn in accordance with section 24AB(7) of the FOI Act.

Contact

Should you wish to revise your request or have any questions in relation to this process, please do not hesitate to contact foi@homeaffairs.gov.au.

Yours sincerely

[Electronically signed]

Anjani
Position No.60165359
Authorised FOI Officer - Freedom of Information
FOI and Records Management Branch | Legal Group
Department of Home Affairs | www.homeaffairs.gov.au
Email foi@homeaffairs.gov.au