



Mr Paul Williams

By email: foi+request-10892-854d4674@righttoknow.org.au

Our reference: LEX 717

Dear Mr Williams

Freedom of information request

1. I am writing about your request dated **22 November 2023** for access to documents under the *Freedom of Information Act 1982* (FOI Act) held by the Australian Public Service Commission (Commission).
2. I am an authorised officer under section 23(1) of the FOI Act to make decisions in relation to Freedom of Information (FOI) requests.

Request Consultation Process

3. I am now contemplating issuing a ‘practical refusal reason’ under section 24AA(1) of the FOI Act for both reasons:
 - The work involved in processing your request in its current form would substantially and unreasonably divert the resources of the Commission from its other operations due to its size and complexity; and
 - The request does not satisfy the requirements under section 15(2)(b) (identification of documents).
4. On this basis, I intend to refuse 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.
5. This is called a ‘request consultation processes’ under section 24AB of the FOI Act.
6. You have 14 days to respond to this notice in one of the ways set out below.
7. We received your request on 22 November 2023, and a decision is due to you on 22 December 2023. Noting that processing time for your request surrounds end of year shutdown and staff absences, pursuant to section 15AA of the FOI Act, I would like to request an extension of 30 days to process your request.

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Why I intend to refuse your request

8. You requested access to documents in the following terms:

*“I refer to the Common Conditions dashboard available at the following URL:
<https://www.apsc.gov.au/apsbargaining/common-conditions-dashboard>*

This is a request for information under the Freedom of Information Act. I seek the following documents:

- 1. All documents received by the APSC from APS agencies which detail any agency assessments as to whether conditions listed on the dashboard are "gains" (or otherwise).*
- 2. Any documents created by the APSC which detail APSC assessments of any APS agency claims referred to in point 1 above.”*

9. On 4 December 2023, you revised the scope of the above request to remove draft versions of documents, and removed ‘or otherwise’.

10. Under subsection 24AA(2) of the FOI Act an agency or minister 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 or the office of the Minister;
- 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.

11. Further to the above, the Commission may have regard to other matters in deciding if a practical refusal reason exists, relevantly:

- the staffing resources available to an agency;
- the impact that processing a request may have on other work in an agency; and
- whether an applicant cooperates in framing a request to reduce the processing workload.

12. I have taken into account all of the above matters in forming my preliminary decision to refuse your request. I have not taken into account:

- any reasons that you have given for requesting access; or
- the Commission’s belief as to what your reasons are for requesting access; or

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- any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

13. My reasons are set out below.

Reasons

14. Firstly, I am of the preliminary view that processing your request would be a substantial diversion of the Commission's resources because, if it is accepted that the request provides such information concerning the document/s as is reasonably necessary to enable a responsible officer of the Commission, to identify it:

- collecting and reviewing the volume of material involved would be significant;
- identifying, locating and or collating documents would particularly be onerous as it is estimated that documents from multiple sources will be found that may be captured by the form the request takes.
- formal consultation under the FOI Act with multiple third party individuals may be required;
- formal or informal courtesy consultation with impacted agencies is highly appropriate in the circumstances;
- given the broad scope of the request, an employee will have to examine each individual document in detail to assess whether they are in scope; and
- the contents of the documents will require diligent examination and likely involve significant redactions.

15. Further, I am also of the preliminary view that processing your request would be an unreasonable diversion of the Commission's resources because:

- the Commission is a small portfolio agency, with limited staffing resources available;
- the Commission does not have, nor has ever previously required, any permanent dedicated FOI staffing resources as it has historically received a low number of FOI requests that are capable of being managed within the existing resources;
- the Commission has limited capacity to obtain temporary resourcing in considering the impact of processing your request; and
- the Commission is currently working on a number of priority matters related to the Government's public service reform agenda. Processing your request would unreasonably divert resources that would otherwise be dedicated to performing the essential operations of the agency.

16. Secondly, the request currently framed does not provide information concerning the document or documents as is reasonably necessary to enable the Commission to identify the document or documents under section 15(2)(b) of the FOI Act.

17. Part of your request seeks documents "*which detail any agency assessments as to whether conditions listed on the dashboard are "gains"*".

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18. The word “*gains*” require a subjective assessment of the content of the documents, rather than an objective identification of documents that exist. That is, the decision maker would need to understand the mind of the agency at the time when determining whether a condition is a ‘gain’, and a decision maker cannot objectively conduct this exercise when reviewing the contents of the documents.

Amount of time to process your request

19. Based on a preliminary assessment of the volume of documents and a review of a sample of their contents, a breakdown of the time estimated for each stage in processing a request is approximately:

Search and retrieval	Time required to undertake tasks
Executing searches, examining relevant documents and collating documents	Up to 14 hours
Decision making	
Identify and examine relevant documents	Up to 5 hours
Redacting pages	Up to 5 hours
Consult third parties	Up to 75 hours
Writing statement of reasons	Up to 3 hours
Compiling schedule of documents	Up to 0.3 hours
Process subtotal	Up to 102 hours
Process Total (minus ‘first 5 hours free’)	Up to 97 hours

Request consultation process

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

21. Revising your request can mean narrowing its scope to make it more manageable or explaining in detail the documents rather than the information you wish to access. For example, by identifying if there are any APS agencies that are of particular interest to you, the Commission will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

22. Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request;

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- make a revised request; or
 - advise us that you do not wish to revise your request.
23. The consultation period runs for **14 days** and starts on the day after you receive this notice.
24. Please also advise if you approve the request for a 30 day extension to process your request.
25. During this period, you are welcome to seek assistance from the Commission 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. Please note that under section 24AB(8) of the FOI Act, the time taken to consult you regarding the scope of your request is disregarded for the purposes of the 30 day time limit for processing your request.
27. If you do not do one of the three things listed above during the consultation period or you do not consult the Commission during this period, your request will be taken to have been withdrawn.

Contacts

28. If you require clarification on matters in this letter please contact the Commission's FOI Officer by email at foi@apsc.gov.au.

Yours sincerely



Harrison Miller
Authorised FOI decision maker
15 December 2023