



DEFENCE FOI 481/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by Simon Harris (the applicant), dated and received on 29 November 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

- type of document: correspondence by email or letter to the AWM, including the persons listed in the initial FOI request

- date of correspondence: from 1 July 2019 to date

*- topics: Official Histories referenced here:
[<https://www.awm.gov.au/learn/understanding-military-history/official-histories/iraq-afghanistan-timor>] in particular correspondence relating to the publication of information regarding operations in Afghanistan from 2010-2014.*

Background

2. On 26 November 2023, the applicant submitted a request under the FOI Act to Defence in the following terms:

...any correspondence with the AWM (including without limitation the following persons: Dr Craig Stockings, Dr Steven Bullard, Dr Rhys Crawley, Dr David Stevens, Dr William Westerman, and Dr Andrew Richardson) regarding the scope of the Official History of Australia's involvement in Afghanistan and the timing of the release of the relevant volumes of the text.

3. On 29 November 2023, Defence formally consulted with the applicant in accordance with section 24AB of the FOI Act. The notice provided to the applicant included a statement outlining Defence's intention to refuse the request on the grounds that that a practical refusal reason existed in relation to it.
4. On the same day, the applicant revised the scope of the request to the terms outlined in paragraph 1.
5. On 22 December 2023, Defence wrote to the applicant seeking their agreement to extend the period for processing the request until 25 January 2023 in accordance with section 15AA [extension of time with agreement] of the FOI Act. No response was received within the statutory timeframe of the request.

FOI decision maker

6. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Decision

7. I have decided to refuse this request for access under section 24AA(1)(a)(i) of the FOI Act on the basis that the work involved in progressing this request would substantially and unreasonably divert resources of the department from its other operations.

Material taken into account

8. In making my decision, I have had regard to:
- a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions of the FOI Act; and
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. advice received from relevant officers within Defence.

REASONS FOR DECISION

Section 24AA – When does a practical refusal reason exist?

9. Section 24AA of the FOI Act outlines when a practical refusal reason exists for the purposes of section 24. Relevantly, section 24AA(1)(a) provides that a practical refusal reason exists if:

(a) the work involved in processing the request:

(i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations

10. Section 24(1) of the FOI Act provides that:

If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:

(a) must undertake a request consultation process (see section 24AB); and

(b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.

11. In considering whether a practical refusal reason exists I had regard to the matters set out in section 24AA(2), namely the resources required to perform the following activities:

- a. identifying, locating or collating documents within the filing system of the agency or minister;
- b. examining the documents;
- c. deciding whether to grant, refuse or defer access;

- d. consulting with other parties;
 - e. redacting exempt material from the documents; and
 - f. notifying a final decision to the applicant.
12. In order to identify all documents with scope of your request, searches would be required to be undertaken of the email accounts pertaining to every individual employed by Defence from 1 July 2019 to the date of request.
 13. Searches of the Defence Records Management System, *Objective*, conducted by a single team which could reasonably be expected to hold correspondence should they exist, revealed that they possess approximately 3370 emails relevant to the scope of the request. Using a conservative estimate of 2 pages per email and 1 minute to review each page, it would take one full time staff member 112 hours to consider the documents located by this one team alone.
 14. In *VMQD and Commissioner of Taxation (Freedom of information)* [2018] AATA 4619 (17 December 2018) at paragraph 101, the Senior Tribunal Member Puplick stated 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 have not included in this estimate, the time required to conduct searches of information holdings for all Groups and Services within Defence. Therefore, noting your request seeks access to ‘correspondence by email or letter to the AWM’ for the period 1 July 2019 to 29 November 2023, I consider the actual time required to fulfil this request to be considerably higher than the estimate detailed in paragraph 13.
 15. If this request were to be processed in its current form, it would have a substantial and adverse effect on Defence’s ability to perform its usual functions.
 16. Taking all the above into consideration I deem that the work required to progress the request would substantially and unreasonable divert the resources of the Department and on this basis I refuse access under section 24AA(1)(a)(i) of the FOI Act.

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Erin Dickson
A/Assistant Director Freedom of Information
Governance Group