



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ24/00042

By email: foi+request-11030-6e7dc801@righttoknow.org.au

Freedom of Information Request – FOIREQ24/00042

Dear CR

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Commissioner (OAIC) on 17 January 2024.

I am writing to consult with you on the basis that your request gives rise to a practical refusal reason.

Background

Scope of your request

Your FOI request sought access to the following information:

Applications from agencies under s 89K of the FOI Act seeking to have persons declared vexatious applicants, for the period from 1 January 2022 to the date of this request.

Notice of intention to refuse your request

I am an officer authorised under s 23(1) of the FOI Act to make FOI decisions on behalf of the OAIC.

I am writing to consult with you under section 24AB of the FOI Act, because:

- I believe that the work involved in processing your request will substantially and unreasonably divert the resources of the OAIC from its other operations due to its size and scope (s 24AA(1)(a)(i)).

For the purposes of the FOI Act, this is called a ‘practical refusal reason’ (s 24AA(1)(a)(i) of the FOI Act).

On this basis, I intend to your request for access to documents unless the terms of your request are revised, so as to remove the practical refusal reason.



However, before I proceed to a refusal decision, you have an opportunity to revise your request again. This is called a 'request consultation process' as set out under s 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out at the end of this letter.

Why I intend to refuse your request

Calculation of the processing time – substantial diversion

Based on searches conducted by the relevant line areas, and a preliminary review of the documents contained in your request, I estimate it will take the OAIC an exorbitant amount of hours to process your FOI request in its current form.

I consulted with the following line areas in relation to your request;

- FOI Branch

As a result of the searches undertaken to date, I have identified 7 applications with over 3,500 pages falling within the scope of your request. It took 5 hours to complete the search for documents relevant to your request.

I have reviewed 1 application of 1900 pages. A preliminary review of this material indicates that the documents contain sensitivities. At a minimum, I would have to consider the application of the following FOI Act exemption provisions;

- Section 47E (operations of an agency)
- Section 47F (personal information)

Based on a sampling exercise, I estimate that it will take conservatively 1 minute per page, to examine and assess each document for potential release in accordance with FOI Act exemption provisions.

I further estimate that it will require 1 minute per page to prepare an edited PDF copy of the document, including the redaction of exempt material, noting that you have not excluded the applicant names. On the basis that there will be 3500 pages within the scope of the request, these tasks will take more than 115 hours.

I also estimate that it will take 2 hours to prepare a decision statement and schedule of documents. I would also be required to undertake third party consultation of at least 7 individuals. I estimate it would take 14 hours to undertake those consultations.

I have therefore calculated it will take at least 136 hours to process your request.



I consider that the processing of your request would be a substantial diversion of the OAIC's resources, for the purposes of section 24AA(1)(a)(i) of the FOI Act.

Unreasonable diversion of resources

An estimate of processing time is only one of the considerations to be taken into account when deciding whether a practical refusal reason exists. As well as requiring a request to substantially divert an agency's resources, s 24AA also requires the request to unreasonably divert an agency's resources from its other functions before it can be refused under s 24.

The Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines) identify 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 OAIC for FOI processing
- the impact that processing the request may have on other tasks and functions of the OAIC
- whether an applicant has cooperated in revising the scope of the request
- whether there is a significant public interest in the requested documents
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

The OAIC is a small agency, employing approximately 140 (head count) staff. I consider that processing a request of this size would substantially impact on the OAIC's operations because of the limited number of people the OAIC has available to process FOI requests of this size and nature.

On the basis that your request will require at least 136 hours to process, it is likely that the processing of your request would divert OAIC staff away from their other work, including the OAIC's:

- ability to process its ongoing FOI request load
- regulatory functions in both FOI and privacy
- activities set out in the OAIC's 2020/2021 Corporate Plan such as:
 - conciliating and investigating privacy complaints, responding to notifiable data breaches, and overseeing the privacy aspects of the My Health Record system
 - monitoring the handling of personal information in the COVIDSafe system.
 - implementation of the Consumer Data Right scheme
 - monitoring compliance with new legislation and providing guidance and education



- improvement of processes for managing FOI requests

For these reasons I have formed the view that processing your request would substantially impact the OAIC's operations.

I also consider that the processing of your request would be an unreasonable diversion of the OAIC's resources.

Request consultation process

You now have an opportunity to revise your request so as to remove the practical refusal reason. In particular, if you remove attachments from the applications and agree to exclude personal information of applicants from the request this would remove the practical refusal reason.

By way of assistance, we have also drafted the following revised scope for your consideration:

Applications from agencies under s 89K of the FOI Act seeking to have persons declared vexatious applicants, for the period from 1 January 2022 to the date of this request, excluding any attachments. Personal information relating to the applicants is excluded from the scope of this request.

If you would like to proceed with the above revised scope of your request or proceed with another revision of scope you should advise us in a reply email.

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

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for **14 days** and starts on the day after you receive this notice. Therefore, you must respond to this notice by 16 February 2024.

During this period, you can ask the contact person (see below) for help to revise your request. If you revise your request in a way that adequately addresses the practical refusal reasons 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 30-day time limit for processing your request.



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If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Contact officer

If you would like to revise your request, or have any questions, you can contact me at foi@oaic.gov.au.

Yours sincerely,

Emily Elliott

Senior Lawyer

31 January 2024