



AFP

Our reference: LEX 2405

16 April 2024

CR

By email: foi+request-11057-2ff1fa28@righttoknow.org.au

Dear CR

Freedom of Information Request – Section 24AB(2) Notice

I refer to your email of 31 January 2024 seeking information under the *Freedom of Information Act 1982* (the Act) in the following terms:

- 1. I request the creation of a document under section 17 listing documents containing the words "Clearview AI" or any variants/abbreviations of that term (such as "Clearview", or "Clearview facial recognition", etc.), for the period 1 January 2017 to 29 January 2024.*
- o The list should specify, where applicable:*
- + The title of each document.*
 - + The date of creation for each document.*

On 8 February 2024, you revised your request in the following terms:

- I request the creation of a document under section 17 listing:*
- 1. All correspondence between the AFP and Clearview AI, Inc*
 - 2. All internal correspondence containing the words "Clearview AI or any variants/abbreviations of that term (such as "Clearview", or "Clearview facial recognition", etc)*
 - 3. FOI requests received relating to Clearview AI.*

- The list should specify, where applicable:*
- + The title of each document.*
 - + The date of creation for each document.*

On 3 March 2024, you were issued with a Notice of Intention to Refuse due to the large volume of documents captured by the scope of your request. You were invited to revise the scope of your request to enable the AFP to process your request.

On 3 March 2024, you responded with the following:

In the interest of reducing the volume of work required to process part two of my request, I propose limiting its scope to only include correspondence with heads of departments. Please confirm if this amended scope would assist in reducing the workload.

On 4 April 2024, the AFP wrote to you seeking clarification on your definition of the term 'heads of departments'. You were asked if you were referring to the AFP Commissioner and/or Deputy

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Commissioners. You were advised once clarification was provided, the AFP would be in a position to conduct searches on the new parameters.

Clarification of scope

The AFP is undertaking a formal consultation process with you in regards to obtaining clarification on the scope of your revised scope to enable searches to be conducted.

As the AFP is unclear on your definition of *'heads of departments'*, additional searches have not been able to be undertaken. The reference *'heads of departments'*, in APS terminology refers to the Secretary of a department/agency. However, you may be referring to the head (being the Commander) of each Command within the AFP. As stated, clarification is required to gain an understanding as to who you are seeking documents from.

Furthermore, clarification is sought on *'correspondence with heads of departments'*. Can you please advise if you are meaning internal correspondence to the relevant head of department, or internal correspondence between staff and their head of department (which clarification is being requested on this terminology as well).

Please note, it will be an unreasonable and substantial diversion of agency resources to undertake searches across all Commands for an unspecified or specified period of time. There are currently 72 Commands within the AFP who would need to undertake searches in regards to the scope of your request. There have been multiple agency restructures as well as AFP Executive who have left the agency, so it would be very difficult and time consuming process to determine who held a position of Commander since 2017.

As such, the AFP has assessed that your scope in its current form, the AFP are unable to identify the documents you are seeking access too under section 15(2)(b).

The AFP has therefore determined under section 24AA of the Act that a practical refusal reason has been established and we are writing to you to offer our assistance to revise the request so that the practical refusal reason no longer exists in accordance with section 24AB of the Act.

For your information, an extract of sections 24AA and 24AB of the Act is attached for your information at Attachment A.

Next steps

Options available under section 24AB of the Act

You now have **14 days** from the date of this letter to consult with the AFP regarding the scope of the request. During this period you may wish to withdraw your request, make a revised request or indicate you do not wish to revise your request. Should you not avail yourself of this opportunity to consult within 14 days of the date of this letter, or the practical refusal reasons not be resolved, notice will be given of a decision to refuse access.

I note this request is now deemed, however the AFP have an obligation to continue processing your request until a decision has been provided to you.

I am the FOI officer with whom you may consult with a view to making the request in such a form that would remove the ground for refusal. I can be contacted by email at foi@afp.gov.au.

Suggestions to remove the practical refusal reason

The FOI team are committed to assisting you to finalise your FOI request. Should you decide to provide the clarification required to process your request, you may wish to consider the following suggestions to remove the practical refusal reason:

- provide clarification on the term *'heads of departments'*;

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- provide clarification on *'correspondence with heads of departments'*; and
- reduce documents to only ACCCE, as the area who has the main responsibility for documents to which you are seeking access.

Yours sincerely,

C.A

Casey
A/FOI Team Leader - Corporate
Freedom of Information
Chief Counsel

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24AA When does a *practical refusal reason* exist?

- (1) For the purposes of section 24, a ***practical refusal reason*** exists in relation to a request for a document if either (or both) of the following applies:
 - (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; or
 - (ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister’s functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
 - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (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 such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
 - (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency’s or Minister’s belief as to what the applicant’s reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

24AB What is a *request consultation process*?

Scope

- (1) This section sets out what is a ***request consultation process*** for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
 - (a) an intention to refuse access to a document in accordance with a request;

- (b) the practical refusal reason;
- (c) the name of an officer of the agency or member of staff of the Minister (the **contact person**) with whom the applicant may consult during a period;
- (d) details of how the applicant may contact the contact person;
- (e) that the period (the **consultation period**) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), **reasonable steps** includes the following:
 - (a) giving the applicant a reasonable opportunity to consult with the contact person;
 - (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
 - (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
 - (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
 - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.