



17 November 2015

**In reply please quote:**

FOI Request FA 15/11/00818

File Number: ADF2015/62112

To Luke Chandler

By Email: [foi+request-1372-d89abc3d@righttoknow.org.au](mailto:foi+request-1372-d89abc3d@righttoknow.org.au)

Dear Mr Chandler

**Practical refusal notice - *Freedom of Information Act 1982***

I am writing to you in relation to your request under the *Freedom of Information Act 1982* (the FOI Act) on 12 November 2015 for:

*All information for New Zealand citizens currently detained in Australia detention centres*

*All information on Ngati Kanohi Te Eke Haapu that is currently being detained in Australia - Including but not limited to what charges is Ngati Kanohi Te Eke Haapu is currently facing*

I note that your request is currently due on 12 December 2015.

**Purpose of this notice**

The purpose of this notice is to advise you (as required under s.24AB of the FOI Act) that I consider that a *practical refusal reason* exists under s. 24AA of the FOI Act and that I am considering refusing access to the requested documents, under s.24 of the FOI Act. My reasons are set out in this notice.

This notice sets out the actions required from you in order to ensure that no 'practical refusal reason' applies to your request.

**Advice regarding practical refusal reasons**

The FOI Act contains two practical refusal reasons. The first is that processing the request *would substantially and unreasonably divert the resources of the agency from its other operations* (s.24AA(1)(a)).

An agency may also refuse an FOI request if the agency is satisfied that the request does not *provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify the document in question* (s.24AA(1)(b)).

It is the Department's view that where it appears that a request under the FOI Act for access to documents is likely to take more than 40 hours to complete, the request should be assessed under s.24AA(1) of the FOI Act to determine whether a practical refusal reason exists in relation to the request. This balances the right of applicants to seek information under the FOI Act with the Department's need to appropriately allocate resources to its functions.

### **Application of s.24AA of the FOI Act to your request**

In your request you have provided that you seek access to 'All information...' the use of this terminology is insufficient for the Department to identify the specific documents it is you wish to access. Further, your request does not include a timeframe for documents relevant to your request.

The FOI guidelines provide advice to agencies when interpreting the scope of a request, in particular I note the following:

*A request should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used. [3.54]*

*A request can be described quite broadly and must be read fairly by an agency or minister, being mindful not to take a narrow or pedantic approach to its construction [3.98]*

Currently the wording of your request could be interpreted in a very broad manner. In particular, your request would extend to the client records held by the Department in relation to New Zealand citizens who are currently held in immigration detention.

For your reference the Department's recent publication of Immigration Detention and Community statistics identifies that as at 30 September 2015 there were 195 New Zealand nationals held in Immigration Detention facilities (for your reference this report is available on the Departments website).

Each of these individuals would have ongoing client records that are maintained by the Department. To identify relevant documents the Department would first need to identify each of the individuals currently in immigration detention; search and recall the identified individual's client records (which can be located both in the Department and with contracted service providers i.e. medical records are held with IHMS); assess each document under the FOI Act, for which there could be thousands of documents.

In relation to client records the Department would need to consider the application of an exemption under s.47F of the FOI Act; consideration of the public interest test would also apply to these documents. The Department is further required to formally consult third parties when their information is subject to be released through the FOI Act (s.27A). Such a large number of consultations would take about 390 hours to complete and the Department is satisfied that such a task is an unreasonable diversion of resources. This estimated time does not take into account the time it would take to search and retrieve these records; or for the decision maker to assess and finalise a decision on these documents.

Additional documents possibly captured by your request would include items such as, media enquiries; Ministerial correspondence; and other communications received from members of the public, in connection to the subject matter you have identified.

In light of the above, I am satisfied that your request 'would substantially and unreasonably divert the resources' of the Department 'from its other operations' and that a practical refusal

reason applies to your request as it currently stands. Therefore, I am required to consult with you under s.24AB of the FOI Act regarding the scope of your request.

To assist you in refining the terms of your request I can make the following suggestions:

- Include a specific timeframe for documents;
- Consider what types of documents you are interested in accessing;
- Consider identifying a specific area of the Department (the Department's organisational chart is available on the website);
- Consider identifying specific officers within the organisation and/or the Ministers office for which documents were provided in relation to your subject matter;
- Exclude personal client records from the scope of your request.

You may consider applying all or some of the above. Alternatively, you may have in mind a specific set of documents you wish to access and you are welcome to provide this advice to the Department.

### **Consultation over scope**

You may consult with me on the scope during the *consultation period* which is from the date this notice until close of business Tuesday 1 December 2015.

You may request that I extend the consultation period if you wish, by writing to me before the end of the consultation period at [foi@border.gov.au](mailto:foi@border.gov.au). The requirements for the consultation period are contained in s.24AB(5).

### **Suspension of processing time**

Please note that s.24AB(8) of the FOI Act provides that the legislated processing time for your request is 'suspended' until you have either:

- revised the request; or
- advised that you do not intend to revise the request.

In addition, if you do not contact me in writing before the end of the consultation period (to either withdraw your request, revise or affirm the scope of your request, or ask for an extension of time to respond to the s.24AB notice) your request will be deemed to be withdrawn in accordance with s.24AB(7) of the FOI Act. The relevant legislation is attached to this notice.

Yours sincerely



Janelle Raineri  
 Authorised FOI Decision Maker  
 Freedom of Information Section  
 Department of Immigration and Border Protection  
 Phone (02) 6264 1580  
 Email [foi@border.gov.au](mailto:foi@border.gov.au)

Attachment

- Attachment A - Extract of relevant legislation

## Attachment A – Extract of relevant legislation

### 24 Power to refuse request—diversion of resources etc.

- (1) 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.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
  - (a) the requests relate to the same document or documents; or
  - (b) the requests relate to documents, the subject matter of which is substantially the same.

### 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.