



13 January 2016

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

Dear Mr Chandler

Freedom of Information request – decision on access

This letter refers to an access request received under the *Freedom of Information Act 1982* (the FOI Act) on 12 November 2015.

You requested access to the following information:

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

On 17 November 2015 I issued you a notice under s.24AB(2) of the FOI Act, advising you that a 'practical refusal reason' existed in relation to this request. I advised you that I was satisfied your request met the definition of a 'practical refusal reason' in s.24AA(1) of the FOI Act, as it appeared that the work involved in processing the request would 'substantially and unreasonably divert the resources' of the Department from its other operations. Under the notice, you were provided with a 14 day 'consultation period' ending on 1 December 2015 during which you could consult with me about the scope of the request.

The notice advised you that you were required to respond before the end of the consultation period and either (a) withdraw your request or (b) revise the scope of your request or (c) confirm that you did not wish to revise the scope.

You responded to the notice on 17 November 2015 and revised scope for your request to:

I would like to clarify my request.

All information on the reasons New Zealand Nationals are currently being in Australian Detention Centres, including (**but not limited to**); A break down of prison time served (if any), a breakdown of reasons for Detention

&

Why these New Zealand Nationals have not been deported

On 19 November I responded to advise that I would consult the responsible business areas on your revised request. I then wrote to you on 18 December 2015 to outline that the request remained an unreasonable diversion of resources. In my correspondence I sought your agreement to extend the consultation period and invited you to further consult with me on the scope of your request. I provided you with access to recently released documents that may have been relevant to the broader nature of your request and provided you with advice on how you could consider revising the scope to remove the 'practical refusal reason'.

The Department has not received further correspondence from you in relation to your request. Therefore, the Department has accepted the revised terms of your request which you made on 17 November 2015. I note that the original consultation period expired on 1 December 2015.

This letter sets out my decision on your request for access to documents under the FOI Act.

I am an authorised decision-maker under section 23 of the FOI Act.

Timeframe for processing your request

According to section 15 and s.24AB(8) of the FOI Act, the statutory timeframe for the processing of your request expired on 26 December 2015. The Department apologises for the delay in processing your request.

Relevant material considered

In reaching my decision I referred to the following:

- the terms of your revised request
- the FOI Act;
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act; and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

Reasons for Decision

Section 24(1)(b) of the FOI Act provides that, where a practical refusal reason exists, an agency may refuse to process a request only if the agency has undertaken the 'consultation process' in s.24AB of the FOI Act and, after completing the consultation, the agency remains satisfied that a practical refusal reason exists.

I note that I have undertaken the consultation process in s.24AB. Nevertheless, I remain satisfied that the request still meets the definition of a 'practical refusal reason' in s.24AA(1)(a)(i) in that processing the request will involve a substantial and unreasonable diversion of the Department's resources.

The reason for this is because you have used broad terminology within your request, as highlighted in the above revised scope.

To identify if relevant documents are held by the Department a search of each relevant client file would be required. I note that the one of the documents I provided you access to on 18 December 2015 identifies that there are 339 cancellations of New Zealand citizen visas for the period 2014-2015.

Each of these individuals would have 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 Australian immigration detention; search and recall the identified individual's client records (which can be located both in the Department and with contracted service providers); identify the relevant records; and assess each document including any consultations as required under the FOI Act. I have set out the search and retrieval process below and provided advice on formal consultation.

Time to Identify the Individuals

To identify each of the 339 individuals the Department would be required to run a report, if available, to provide the client details. An officer would then be required to check each of these individuals within the client management system to identify if they were currently located in an Australian immigration detention facility.

I estimate that it would take on average 3 hours to prepare and run a report to identify the individuals and a further 5 minutes per individual to identify if they were located in an Australian immigration detention facility. To undertake this task it would take the business area 31 hours to complete.

Time to Identify Relevant Documents

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).

I note that the number of documents on a client file can vary and in some cases a client may have more than one file, especially if their interaction with the Department has involved multiple business areas. However, for the purpose of assessing the processing time to identify relevant documents for your request I have applied a conservative estimate.

My assessment includes the following:

- A minimum of 1 file per client to review
- A minimum of 10 documents per file to review (based on a sample of files located on the Department's electronic file record system and using a 'Title' key word search of 'New Zealand – Cancellation')

This estimate provides a total of 1,950 documents to review. Each document on the client's file will need to be reviewed to identify if it contains information subject to the scope of your request. I note that you seek access to three key pieces of information being:

1. *A break down of prison time served (if any),*
2. *a breakdown of reasons for Detention*
3. *Why these New Zealand Nationals have not been deported*

Taking this into consideration, it is estimated that the business area would require 162 hours to search those files and retrieve documents subject to your request. A schedule of the relevant documents would then need to be prepared. Using a calculation of 1 hour per 20 documents and a 10% possibility that documents will be relevant to the scope of your request, it is estimated that this task would take 10 hours to complete.

Formal consultation

The information captured by your request is the personal information of third parties. Therefore, the Department needs to consider the application of an exemption under s.47F of the FOI Act to any personal information. Consideration of the public interest test would also apply to these documents.

In these cases a formally consultation with relevant third parties may be required under the FOI Act (s.27A). The Department allows 2 hours per formal consultation and with such a large number of possible consultations this part of the processing for your request would amount to 390 hours.

This estimate of processing time does not take into account the time it would take for the authorised FOI decision maker to then assess the relevant documents and finalise an access decision including the reasons for a decision under the FOI Act on these documents.

Therefore, in order to process your request it would take in excess of 593 hours.

It is my view that the Department would be required to divert significant resources from its current operations in order to identify, locate and collate the documents relevant to your request. In addition, significant resources would be required to assess, consult and finalise an access decision on documents relevant to your request.

This diversion of resources would result in a significant drain on the business areas involved and prejudice their ability to carry out their normal functions and activities.

I am refusing your request for access under s.24(1)(b) of the FOI Act.

Your FOI request has accordingly been closed on our system. I invite you to submit a new request to the Department, should you wish to do so, taking into account my correspondence to you on scope.

Review rights

Internal review

If you disagree with my decision to refuse access under s.24(1)(b) of the Act, you have the right to apply for an internal review by the Department my decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer other than the original decision-maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

Freedom of Information
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@border.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of my decision. You must apply in writing within 60 days of this notice.

For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au .

How to make a complaint about the handling of this FOI request

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by the Department of Immigration and Border Protection in relation to your request. The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone 1300 362 072 (local call charge)
Email ombudsman@ombudsman.gov.au

Your enquiries to the Australian Information Commissioner can be directed to:

– Phone 1300 363 992 (local call charge)
Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Ombudsman or the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Immigration and Border Protection as the relevant agency.

*** Please note:** On 13 May 2014, the Australian Government announced a decision to disband the Office of the Australian Information Commissioner (OAIC). However, the Freedom of Information Amendment (New Arrangements) Bill 2014, which proposes the closure of the Office of the Australian Information Commissioner (OAIC), has not yet been considered by the Senate. The OAIC therefore remains operational until further notice. Information on the OAIC public website advises that Information Commissioner reviews will continue to be handled by the OAIC and FOI complaints will be referred to the Commonwealth Ombudsman. Please contact the OAIC on the details above if you require further information.

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Janelle Raineri
Authorised decision maker
Freedom of Information Section
Department of Immigration and Border Protection

Telephone 02 6264 1580
Email foi@border.gov.au

Attachments:

- Extract from relevant legislation

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.