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Our ref: CRM 2016/324

24 February 2016

Mr Ben Fairless

E-mail: foi+request-1498-2465996d@righttoknow.org.au

Dear Mr Fairless,

On 14 January 2016 you wrote to the AFP seeking access under the *Freedom of Information Act 1982* (the FOI Act) to:

"A copy of all emails sent to the Apple.com APAC Police Requests Email address (apac_police_requests@apple.com) from the 1st of January 2015 until 31 December 2015, and any replies to those emails.

The above request is subject to the below exclusions:

- Duplicates of Documents*
- Personal Information of individuals other than AFP members."*

On 22 January 2016, the AFP wrote to you advising that preliminary enquiries had assessed the request as involving a minimum of 125 hours of staff time to process, and seeking to consult with you under section 24AB of the FOI Act.

On 22 January 2016, you wrote to the AFP asking whether substituting the period 1 January to 1 July 2015 and limiting the request to e-mails (excluding auto-replies) would sufficiently resolve the AFP's resourcing concerns.

On 2 February 2016, the AFP wrote to you advising that the AFP was assessing the proposed revised scope and would respond by 8 February 2016.

On 8 February 2016, the AFP wrote to you and advised that the request was to be refused under s24AA as an unreasonable diversion of resources. The time period was reassessed to 69 hours, based on the proposed alternate scope of your request.

On 8 February 2016 you sought internal review of that decision.

This letter sets out my decision on internal review. I am an authorised decision-maker under section 23 of the FOI Act.

DECISION

The original scope of your request resulted in the identification of 380 documents totalling 760 folios. The proposed substituted request identified 139 documents totalling 350 folios.

I have assessed the estimates of time involved in processing both the original FOI request and the proposed substituted scope. I find that, in their current form, both the current and proposed substituted FOI scopes would constitute an unreasonable diversion of AFP resources, and would (but for the points below) be grounds for refusal under section 24AA.

Negotiation of scope under section 24AB

I have reviewed the correspondence between you and the AFP during the consultation period. I agree with your submission that you were not afforded an opportunity to successfully conclude the consultation.

Section 24AB(6) requires an applicant to withdraw a request, revise their request or indicate that they do not wish to withdraw or revise the request, within 14 days of being notified under that section. In this case, that period expired on 5 February 2016.

However, I note that:

1. There was a delay of more than a week in responding to your e-mail of 22 January 2016.
2. The FOI officer misinterpreted your response as putting forward a new scope for consideration, rather than asking if a new scope would alleviate the practical refusal reasons.

As such, I find that you should have been advised that the proposed revised scope would not alleviate the practical refusal reason, and given an additional opportunity to provide a further revised scope before a decision was made on 8 February 2016.

I apologise for this error, and for any concern or inconvenience that it has caused you.

Resumption of consultation period

I propose to resume the consultation period with you. I note that you are now aware that the AFP contends that a practical refusal reason exists for both the original scope and proposed revise scope.

You may wish to consider revising your scope:

1. To exclude e-mails to and from the AFP that relate solely to stolen Apple devices;
2. To constrain the time period to a shorter period than one year; and/or
3. To exclude auto-reply e-mails.

In accordance with section 24AB(5), with your agreement, I propose to extend the consultation period until close of business **7 March 2016**. After that date, I propose to make a decision as to whether a practical refusal reason still exists or whether the request can be in processed in its current or a revised form.

Should you wish to discuss this further, please do not hesitate to contact either myself or Tanya (AFP14692).

I again apologise for the inconvenience.

REASONS FOR DECISION

Material Taken Into Account

In making my decision, I took account of:

- ❖ the terms of your request;
- ❖ the contents of the documents identified;
- ❖ relevant provisions of the FOI Act;
- ❖ correspondence in relation to your FOI request.

RIGHTS OF REVIEW

If you are dissatisfied with this decision, you may seek a review by the Information Commissioner (IC).

In making your application you need to provide:

- an address for notices to be sent (this can be an email address).
- A copy of this decision.

It would also help if you set out the reasons for review in your application.

Applications for a review of the decision should be addressed to:

Office of the Australian Information Commissioner
GPO Box 2999
Canberra ACT 2601

Right to Complain

Section 70 of the Act provides that a person may complain to the IC about action taken by this Department in relation to your application.

A complaint to the IC may be made in writing and identify the agency against which the complaint is made.

The IC may be contacted on 1300 363 992. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Nathan Scudder', with a long horizontal stroke extending to the right.

Nathan Scudder
Coordinator
Freedom of Information
Chief Counsel Portfolio