

Our ref: CRM 2016/404

11 March 2016

Mr James Mott

Via Email: foi+request-1638-d31f729c@righttoknow.org.au

Dear Mr Mott,

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

I refer to your email of 29 February 2016 seeking information under the *Freedom of Information Act 1982* ("the Act") specifically:

"...any documents or correspondence between the Australian Federal Police, ASIO and Foreign Affairs & Trade members such as Peter Varghese & Julie Bishop in relation to the arrival and departing of intended Jihadist fighters numbering to 312 in 2015 and the cancellation of their passports."

Notification

1. At this time, the AFP is satisfied that the work involved in processing that request would substantially and unreasonably divert the resources of the AFP from its other operations.
2. Notice is hereby given under section 24AB(2) of the Act of an intention to refuse to grant access to the documents sought, pursuant to section 24AA of that Act.
3. I am the agency 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 may be contacted on (02) 6131 6131.
4. The following information is provided to assist you in making a request in such a form that the grounds for the section 24AA refusal are removed. As your request is framed in similar terms as CRM 2016/417, the work involved would be identical to locate relevant documents.

Volume of material held

5. Preliminary enquiries reveal that processing your application in its current form would involve:
 - Five state teams involving approximately 116+ members to undertake searches of PROMIS, internal folders and drives, outlook, diary notes;
 - consultation with five State jurisdictions and Commonwealth agencies; and

- As a sample count, two State teams have indicate in excess of 2,700 documents;

This estimate is the bare minimum number of pages from two State teams and may not include attachments to documents and does not include emails and diary notes.

6. In its current form, the AFP estimates that the examination of the sample documents outlined above would take a minimum of 491 hours of time. The time does not include the time required for searching all teams, redacting personal information of third parties and consultation with State jurisdictions and Commonwealth agencies. This is a burden in terms of resources and is made relevant to a section 24AA(1) decision by virtue of sections 24AA(2)(a), (b), (c) and (d).

Narrowing of scope

7. You could consider narrowing your request so as to remove the grounds for the section 24AB refusal. In revising your request you might like to consider:

- specifically what it is you seek, that is, a particular incident
- smaller date range
- final report of a finalised investigation and excluding all other documents relating to that finalised investigation
- excluding ongoing investigations
- please note that ASIO is an exempt agency under the FOI Act and their information is exempt from disclosure, therefore excluding ASIO information.

8. Under sub-section 24AB(6) of the FOI Act, you are required within the 14 day period to do one of the following:

1. withdraw the request;
2. make a revised request; or
3. indicate that you do not wish to revise the request.

9. As noted above, I would of course be available to discuss the matter. Should you not avail yourself of this opportunity to consult within 14 days of the date of this letter, notice will be given of a decision to refuse access on the basis stated above.

10. An extract of sections 24AA and AB of the Act is attached for your information.

Yours sincerely,



Jacqueline Ellery
Team Leader
Freedom of Information
Chief Counsel Portfolio
Australian Federal Police

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.