

GPO Box 2934, Adelaide SA 5001



**Australian Government**  
**Australian Taxation Office**

Mr Brandon Atkins

By email:  
foi+request-1691-2e8e30ea@righttoknow.org.au

Reply to: GPO Box 2934  
ADELAIDE SA 5001  
Our reference: 1-7S4X03M  
Contact officer: Chad Reich  
Phone: 08 821 81794

28 April 2016

Dear Mr Atkins

### **Notice of intention to refuse your request for access to documents**

I refer to your request under the *Freedom of Information Act 1982* (FOI Act) made on 29 February 2016. The Office of the Information Commissioner has allowed further time to process your request under section 15AC(5) of the FOI Act until the close of business on 1 June 2016.

### **Formal notice under subsection 24AB(2) of the FOI Act**

This is a formal notice of my intention to refuse your request for access to documents pursuant to section 24 of the FOI Act.

I am satisfied that a practical refusal reason, within the definition in paragraph 24AA(1)(a) of the FOI Act, exists in your case, because the work involved in processing the request would substantially and unreasonably divert ATO resources from its other operations.

### **Your request, and subsequent correspondence**

You have asked for 'any document . . . regarding the proposed construction of the new Taxation Office on the site of the former Gosford Public School'.

On 24 March 2016 I wrote to you and advised that thousands of documents will meet the description of the request, and therefore it would be very time consuming and costly to process. I advised that a considerable amount of information relevant to your request and which might interest you is already publically available. I therefore asked whether you would withdraw your request, or alternatively contact me to discuss exactly what aspects of the proposed building you are interested in. In the event that you did not wish to withdraw your request, I also asked whether you would agree to a 30 day extension of time under section 15AA of the FOI Act, which at the time of my correspondence would have made the due date for processing your request 30 April 2016.

On 25 April 2016 you responded via email to my correspondence dated 24 March 2016, stating you are happy to allow additional time for processing your request in order to receive information. Your email however did not address the exact aspects of the proposed building you are interested in, nor have you contacted me again to discuss since. As such, it is necessary to formally notify you of my intention to refuse access to documents.

## Documents

At this stage, I have access to some, but not all of the documents which would fall within the scope of your request. It is difficult to estimate just how many documents may fall within the scope of your request without significant work being done by relevant senior ATO officers, however I am satisfied that there will be thousands.

In my earlier email to you I advised that many of the documents covered by your request will be exempt under the FOI Act (for instance documents that are subject to cabinet confidentiality, or documents subject to confidence due to their commercial nature). Moreover, we will need to consult with numerous stakeholders, including other government departments, other governments, and commercial entities, and I anticipate that these entities will consider that certain information within the documents should be refused under the FOI Act.

Accordingly, I conservatively estimate that it will take me an average of 1 minute to process each page of the documents covered by the current scope of your request. Based upon a conservative estimate of 3 pages per document<sup>1</sup> for 6.5 hours per day, it would take me more than two weeks to process 1000 documents. There are likely to be more than 1000 documents. This also does not take into account the time it will take me to discuss information within the documents with internal and external stakeholders. I anticipate that this will take me at least one week. This means it will take me at least 3 weeks to process your request in its current form, and the actual time is likely to be far higher.

## Information that is already publically available

In my earlier email to you I advised that there is a significant amount of information relating to the Gosford building that is already publically available.

There is some information on the 'Austender' website, [www.tenders.gov.au](http://www.tenders.gov.au) (search for 'Gosford').

The Parliamentary Standing Committee on Public Works (**the Committee**) has also advised that it is conducting an inquiry into the 'need, scope and value-for-money of the proposed fit-out of the building'. This inquiry is still in progress, and submissions were due by 10 March 2016.

The following link takes you to the Committee's web page for its inquiry. On the right of the screen in the section 'about this inquiry', you can access links to media releases and submissions. The ATO's submission is available to download, and hansard is available for public hearings.

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Works/ATO\\_Gosford](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Works/ATO_Gosford)

On 25 November 2015 Senator Deborah O'Neill moved a motion that the then Acting Assistant Treasurer table all documents recording contacts between:

- a) the Commonwealth and New South Wales Government relating to the purchase or lease of the old Gosford Public School site on the Gosford waterfront; and
- b) the Commonwealth and the New South Wales State Government, Gosford City Council, the Central Coast Regional Development Corporation, the Doma Group and other tenderers relating to the proposed Australian Taxation Office building development in Gosford.

The ATO provided documents to the Acting Assistant Treasurer, and the Assistant Treasurer provided documents to the Committee on 3 December 2015. These are now publically available from the following link.

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<sup>1</sup> Of the documents I already have access to, many are longer than 3 pages, whereas some will be shorter.

[http://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Tabled\\_Papers/Search\\_Results?ito=1&st=1&sr=1&q=Gosford+waterfront&expand=False&drvH=7&drt=2&pnu=44&pnuH=44&f=12%2F11%2F2013&to=23%2F03%2F2016&tpt=0](http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Tabled_Papers/Search_Results?ito=1&st=1&sr=1&q=Gosford+waterfront&expand=False&drvH=7&drt=2&pnu=44&pnuH=44&f=12%2F11%2F2013&to=23%2F03%2F2016&tpt=0)

### **Unreasonable diversion of an agency's resources**

Given that the integrity of the ATO's processes regarding the Gosford building is already subject to Parliamentary scrutiny, information about the Gosford building is already publically available, and the time it would take to process your request in its current form (my estimate is likely to be lower than the time it would actually take), it is my view that the work involved in processing your request in its current form (namely, all documents regarding the proposed construction of the Gosford building) would substantially and unreasonably divert the resources of the ATO from its other operations. This includes both the processing of the many other FOI requests that we receive, and the operations of ATO officers working in specialised areas (for instance our procurement area) who would need to assist in the processing of your request.

### **Means by which your FOI request could be narrowed**

Given the breadth of your current request, it is difficult for me to suggest a way in which you could reduce your request to particular documents that may be of interest to you (over and above the documents that are already publically available).

Instead, it may be useful to consider particular issues that are covered in the documents. You should keep in mind that merely reducing your request to all documents about a particular issue may not, in and of itself, mean that processing the resultant request would not substantially and unreasonably divert the resources of the ATO from its other operations. I therefore invite you to contact me prior to providing a written response to talk about what issues you are interested in, which would allow me to take further steps to determine how many documents might still be covered.

It is useful to note that the ATO is *leasing* a building, so we may not have a significant amount of documents about the actual ownership or construction of the building.

Relevant issues include:

- Documents leading up to the tender 'expression of interest' (**the EOI**);
- The initial responses to the EOI;
- Further correspondence with the respondents to the EOI;
- Documents about the evaluation of responses to the EOI;
- Documents about the design and fit-out of the building;
- Internal documents relating to the Parliamentary Committee process; and
- Communications with other government agencies.

You should also note that much of the information we have about the above issues may be exempt from disclosure, including for the reasons indicated earlier.

### **What you need to do now**

This is a formal notice of my intention to refuse your request for access to documents pursuant to section 24 of the FOI Act, and initiates a 'request consultation period' as defined by section 24AB of the FOI Act.

The standard consultation period is 14 days from receipt of this notice. This period can be extended by the contact person, in writing, with your agreement.

Within 14 days of receipt of this notice (or a further agreed period) you are required to do one of the following by written notice to this office:

- withdraw the request
- make a revised request,
- indicate that you do not wish to revise the request.

I note that any written response must be received by me before the end of the consultation period.


Having said that, I invite you to contact me prior to providing a written response, to talk about what issues you are interested in, which would allow me to take further steps to determine how many documents might still be covered.

***Please note: If you do not consult with the nominated contact person or provide a written reply within 14 days your request will be taken to be withdrawn under subsections 24AB(6) and 24AB(7) of the FOI Act.***

#### **Nominated contact**

I am the nominated contact person with whom you may consult during this period. You can contact me by email at [chad.reich@ato.gov.au](mailto:chad.reich@ato.gov.au) or by calling me on 08 8208 1794.

Yours sincerely,



**Chad Reich**  
Senior lawyer  
General Counsel  
Australian Taxation Office